United States Court of Appeals

for the Second Circuit

APPENDIX

74-1965

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 74-1965

MODERN HOME INSTITUTE, INC.
ROMAC RESOURCES, INC.

Plaintiffs - Appellants

VS.

HARTFORD ACCIDENT AND INDEMNITY COMPANY
HARTFORD FIRE AND INSURANCE CO.
THE AETNA CASUALTY AND SURETY CO.
THE TRAVELERS INSURANCE COMPANY
THE TRAVELERS INDEMNITY CO.
THE CONNECTICUT ASSOCIATION OF INDEPENDENT INSURANCE AGENTS, INC.

Defendants - Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF CONNECTICUT

APPENDIX II

J. DANIEL SAGARIN, ESQ.
855 Main Street
Bridgeport, Connecticut

LEONARD A. SCHINE, ESQ.
JOEL C. KARP, ESQ.
P.O. 5008
Westport, Connecticut

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CONTENTS

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MODERN HOME INSTITUTE, INC. ROMAC RESOURCES, INC.	:	
Plaintiffs	:	
v.	:	CONSOLIDATED CIVIL ACTION NOS.
HARTFORD ACCIDENT AND INDEMNITY COMPANY HARTFORD FIRE AND INSURANCE CO. THE AETNA CASUALTY AND SURETY CO. THE TRAVELERS INSURANCE COMPANY THE TRAVELERS INDEMNITY CO. NATIONWIDE MUTUAL INSURANCE CO. NATIONWIDE MUTUAL FIRE INSURANCE COMPANY ALL STATE INSURANCE COMPANY LIBERTY MUTUAL INSURANCE COMPANY LIBERTY MUTUAL FIRE INSURANCE CO. STATE FARM MUTUAL INSURANCE CO. STATE FARM FIRE & CASUALTY CO. THE CONNECTICUT ASSOCIATION OF INDEPENDENT INSURANCE AGENTS, INC.	:	11386 and 11464
Defendants	:	

SUBSTITUTED CONSOLIDATED COMPLAINT

PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiffs MODERN HOME INSTITUTE, INC., a New York corporation having its principal place of business in Pelham, New York and ROMAC RESOURCES, INC., a New York corporation having its principal place of business in New York, complain and allege as follows:

DESCRIPTION OF THE PARTIES, JURISDICTION AND VENUE

1. At all times hereinafter mentioned, and at all times pertinent to this complaint, Modern Home Institute, Inc. was and is a corporation duly organized and existing under the name Modern Home Institute, Inc. by virtue of the laws of the State of New York. Romac Resources, Inc. was and is a corporation duly organized and existing under the name Romac Resources Inc. by virtue of the laws of the State of New York. Romac Resources, Inc. is a wholly owned subsidiary of Modern Home Institute, Inc. each of which companies have their principal place of business located at Pelham, New York. (Hereafter

collectively referred to as "plaintiff").

2. At all times hereinafter mentioned and at all times pertinent to the complaint the defendant insurance companies were insurance corporations licensed to do business in the State of Connecticut. Each of the defendants is an inhabitant of, can be found or transacts business within the District of Connecticut.

3. Defendant Hartford Accident and Indemnity Company is and at all times pertinent to this complaint was a Connecticut corporation licensed to do business in the State of Connecticut. Defendant Hartford Fire Insurance Company is and at all times pertinent to this complaint was a Connecticut corporation licensed to do business in the State of Connecticut. (These defendants are hereafter collectively referred to as "The Hartford").

4. Defendant The Aetna Casualty and Surety Company is and at all times pertinent to this complaint was a Connecticut corporation licensed to do business in the State of Connecticut. (This defendant is hereafter collectively referred to as "Aetna").

5. Defendant The Travelers Insurance Company is and at all times pertinent to this complaint was a Connecticut corporation licensed to do business in the State of Connecticut. Defendant The Travelers Indemnity Company is and at all times pertinent to this complaint was a Connecticut corporation licensed to do business in the State of Connecticut. (These defendants are hereafter collectively referred to as "The Travelers").

6. Defendant Nationwide Mutual Insurance Company is and at all times pertinent to this complaint was an Ohio corporation licensed to do business in the State of Connecticut. Defendant Nationwide Mutual Fire Insurance Company is and at

all times pertinent to this complaint was an Ohio corporation licensed to do business in the State of Connecticut. (These defendants are hereafter collectively referred to as "Nationwide").

7. Defendant All State Insurance Company is and at all times pertinent to this complaint was an Illinois corporation licensed to do business in the State of Connecticut. (This defendant is hereafter collectively referred to as "All State").

8. Defendant Liberty Mutual Insurance is and at all times pertinent to this complaint was a Massachusetts corporation licensed to do business in the State of Connecticut. Defendant Liberty Mutual Fire Insurance Company is and at all times pertinent to this complaint was a Massachusetts corporation licensed to do business in the State of Connecticut. (These defendants are hereafter collectively referred to as "Liberty Mutual").

9. Defendant State Farm Mutual Insurance Company is and at all times pertinent to this complaint was an Illinois corporation licensed to do business in the State of Connecticut. Defendant State Farm Fire and Casualty Company is and at all times pertinent to this complaint was an Illinois corporation licensed to do business in the State of Connecticut. (These defendants are hereafter collectively referred to as "State Farm").

10. As used in this complaint the term "defendant insurance companies" will refer to all of the defendants named in paragraphs 3 through 9 collectively. As used in this complaint the term "agency writer insurance companies" will refer to the defendants named in paragraphs 3, 4 and 5 collectively. As used in this complaint the term "direct writer insurance companies" will refer to defendants named in paragraphs 6, 7, 8 and 9 collectively.

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11. Defendant The Connecticut Association of Independent Insurance Agents, Inc. is and at all times pertinent to this complaint was a Connecticut corporation having a principal place of business in the State of Connecticut and is a trade association of Independent Insurance Agents who sell insurance in the State of Connecticut. (This defendant is hereafter referred to as "CAIA").

12. This court has jurisdiction of this action (i) under Section 4 of the Act of Congress of October 15, 1914 (15 U.S.C. Section 15), commonly known as the Clayton Act in that this action is brought to recover treble damages for injuries to business and property of plaintiff resulting from violations of the antitrust laws of the United States and more specifically in violation of Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. Section 1) commonly known as the Sherman Act, (ii) under Title 28, Section 1331 of the United States Code (28 U.S.C. Section 1331) in that the action involves federal questions and the matter in controversy exceeds exclusive of interest and costs the sum of $10,000.00 (iii) under Title 28, Section 1337 of the United States Code (28 U.S.C. Section 1337).

13. Each of the defendants as more particularly set forth above, reside within the judicial district of the State of Connecticut.

COUNT ONE

NATURE OF TRADE AND COMMERCE AND BACKGROUND

14. A major branch of the insurance industry is automobile insurance which provides collision, liability, theft, fire and various other coverage relating to automobiles (hereinafter "insurance"). Insurance is sold by insurance companies throughout the United States and is evidenced by the issuance of an insurance contract, commonly called a policy, in exchange for an amount of money, commonly called the premium. Policies are sold either directly to a policy

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holder by the company, (direct writer) or through independent agents who receive a commission for each policy they sell (agency writer). The sale of insurance and the solicitations, negotiations, execution, collection of premiums, payment of policy obligations which precede or succeed the actual sale involve a continuous and indivisible stream of intercourse among the states.

15. All of the defendants named in this action except the defendant CAIA are so engaged in the insurance business in the State of Connecticut and in various other states.

16. The defendant CAIA is a trade association which consists of some 1800 insurance agents or agencies in the State of Connecticut who have banded together for the purpose of fostering and promoting the interest of independent insurance agents.

17. The sale and issuance of insurance, original and renewals, is a profitable business for both the insurance companies and the independent agents who sell such policies.

18. Knowledge of the particular expiration dates of insurance policies held by members of the public is of substantial monetary value to the insurance industry. It affords an important advantage to one soliciting such insurance in that it enables the seller to solicit from persons ready to repurchase insurance due to the termination of their present policies. Such expiration dates are commonly known in the insurance trade as "X dates". They are acquired by the insurance companies and independent agents only at great expense in time, money and effort, through the direct polling of people and repeated approaches to prospective purchasers.

19. The plaintiff compiled lists of persons and the expiration dates "X dates" of their insurance policies through a method developed by it at great costs and expenses which enabled the plaintiff to discover, gather, process, expedite, analyze, and procure such "X dates" in communities in the

State of Connecticut and the various states of the United States at a cost substantially lower than members of the insurance industry were acquiring or developing such "X dates

20. From January 1, 1958 until September 30, 1962, the plaintiff Modern Home Institute, Inc. and Romac Resources, In were engaged in the business of selling lists of names and "X dates" which it had compiled as hereinbefore described. During this period, the validity and reliability of the plaintiff's method and the accuracy of the names and "X dates were demonstrated by various tests conducted by some of the defendants.

21. All of the defendant insurance companies manifested a serious interest in the plaintiff's list of names and "X dates" and in the acquisition of such lists and "X dates".

22. Beginning on or about May 1, 1962, and continuing up to and including September 30, 1962, the defendants engaged in a combination and conspiracy in the unreasonable restraint of the aforesaid trade and commerce among the several states.

23. Upon information and belief, the aforesaid combinations and conspiracies have consisted of an agreement and concert of action among the defendants to arbitrarily, wrongfully and unreasonably:

(a) Eliminate and suppress competition among themselves through an unlawful boycott of the plaintiff.

(b) Insulate themselves from the competition, envisaged and anticipated as a consequence of the free and unimpeded sale by plaintiff of said lists of names and "X dates".

(c) Restrain the plaintiff from marketing, selling and otherwise dealing in such lists of names and "X dates" or profitably circulating them in any manner which would increase competition among the defendants generally and to suppress and prevent any trade or commerce in such lists of names and "X

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dates" in the State of Connecticut or elsewhere in the United States.

24. In pursuance of such unlawful combination and conspiracy and in furtherance thereof, the defendants arbitrarily, intentionally, unreasonably and wrongfully:

(a) Refused to deal with or otherwise transact business with the plaintiff and boycotted, coerced, and intimidated the plaintiff even though the purchase of lists and "X dates" was to their individual self-interest and business advantage.

(b) Made, issued and circulated and caused to be made, issued and circulated injurious statements concerning the plaintiff in the insurance trade in the State of Connecticut and elsewhere through the United States.

(c) Caused and instigated numerous injurious rumors concerning the plaintiff to be widely circulated in the insurance trade.

(d) Caused, directly and indirectly, the issuance of adverse publicity injurious to the plaintiff's business.

25. In furtherance of said unlawful agreement combination and conspiracy, defendant insurance companies engaged in a course of deliberately interdependent consciously parallel action in refusing to deal with plaintiff and in otherwise acting as above alleged.

EFFECT

26. The aforesaid violations have had, among others, the following direct effects:

(a) The elimination, suppression and unreasonable restraint of competition and trade in the sale of insurance policies, both original and renewals, in the State of Connecticut and in the various other states of the United States. This elimination, suppression and unreasonable restraint of competition and trade was detrimental not only to plaintiff

but also had the effect of depriving automobile policy holders of the opportunity of purchasing better automobile insurance at lower prices or better automobile insurance at the same prices.

(b) The destruction of the plaintiff's business and properties, as hereinafter more fully described.

27. As a result of the defendants' unlawful conduct as aforesaid, the plaintiff's reasonable expectancy of marketing and selling millions of lists of names and "X dates" per year to the insurance companies in the State of Connecticut and other states of the United States on a local and national scale was destroyed.

28. As a further result of the defendants' unlawful conduct, the plaintiff's business was destroyed with the consequent loss of the plaintiff's reasonable expectancy of trade and profit, its initial capital investment, its costs and expenses in developing its method, and its other related costs.

COUNT TWO

29. Plaintiff repeats and realleges the allegations of paragraphs 1 through 5, 11 through 13 and 14 through 20 of Count One as if set forth in full herein.

30. Each of the defendant agency writer insurance companies manifested a serious interest in plaintiff's list of names and "X dates" and in the acquisition of such lists and "X dates".

31. Nevertheless, prior to May 1, 1962 and continuing through all times pertinent to this complaint, the defendants The Hartford, Aetna, Travelers and CAIA, and other state associations of insurance agents agreed, contracted, combined and conspired in restraint of trade with independent agents in Connecticut and throughout the United States in writing, in practice and/or by custom of industry to restrict and restrain

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competition in the sale and ownership of list of names and "X dates" as inferred in paragraphs 18 through 20 of Count One.

32. Between May 1, 1962 and September 30, 1962, the defendants The Hartford, Aetna, Travelers and CAIA took the following steps in furtherance of the unlawful aims and terms of the aforesaid agreements, contracts and combinations , conspiracies and custom of industry in restraint of trade mentioned herein:

(a) On or about June 14, 1962 defendant The Hartford caused a predated letter to be distributed to and among CAIA and to and among other state associations of independent insurance agents designed to and for the purpose of pressuring other agency companies and specifically Aetna and Travelers to prevent said companies from purchasing "X dates" from plaintiff;

(b) Between May 1, 1962 and September 30, 1962, defendant CAIA acting by and through its officers had meetings with the defendant companies for the purpose of preventing defendant agency writer insurance companies from purchasing "X dates" from plaintiff;

(c) Between May 1, 1962 and September 30, 1962, defendant CAIA, acting in concert with other state associations of independent insurance agents caused unlawful and arbitrary pressure to be brought on agency writer and direct writer companies considering purchasing "X dates" from plaintiff by applying pressure on and through the office of the State Insurance Commissioner in the State of Connecticut and by a concerted effort threatening a group boycott of agency companies which might purchase "X dates";

(d) The purpose of said pressure on the companies and through the office of the Insurance Commissioner of the State of Connecticut was for restraining competition by

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imposing a direct restraint upon plaintiff's activities in violation of the antitrust laws of the United States; and

(e) Defendant insurance companies, The Hartford, Aetna and Travelers responded to said pressure and agreed among themselves expressly and impliedly not to purchase "X dates" from the plaintiff and engaged in a course of deliberately, interdependent, consciously parallel action in refusing to deal with plaintiff.

33. The aforesaid agreements, contracts, combinations, conspiracies and custom of industry constituted per se violations of the federal antitrust laws in that in intention and practice and as directed to plaintiff they constituted.

(a) group boycotts;

(b) an attempt to eliminate and suppress competition;

(c) an attempt to insulate companies and independent agents from the competition envisaged and anticipated as a consequence of the free and unimpeded sale of lists of names and "X dates" as stated aforesaid;

(d) a concerted refusal to deal with individuals offering "X dates";

(e) a means of lessening price and quality competition in the insurance business; and

(f) an attempt to monopolize the sale of "X dates" to agency writer insurance companies.

EFFECT

34. The aforesaid violations have had, among others, the following direct effects:

(a) The elimination, suppression and unreasonable restraint of competition and trade in the sale of insurance policies, both original and renewals, in the State of Connecticut and various other states of the United States. This elimination, suppression and unreasonable restraint of

competition and trade was detrimental not only to plaintiff but also to individual automobile insurance policy holders who were deprived of the opportunity of purchasing comparable insurance at lower prices or better insurance at the same price.

(b) The destruction of the plaintiff's business and properties, as hereinafter more fully described.

35. As a result of the defendants' unlawful conduct as aforesaid, the plaintiff's reasonable expectancy of marketing and selling millions of lists of names and "X dates" per year to the insurance companies in the State of Connecticut and other states of the United States on a local and national scale was destroyed.

36. As a further result of the defendants' unlawful conduct, the plaintiff's business was destroyed with the consequent loss of the plaintiff's reasonable expectancy of trade and profit, its initial capital investment, its costs and expenses in developing its method, and its other related costs.

COUNT THREE

37. Plaintiff repeats and realleges the allegations of paragraphs 1, 2, 3, 9 and 12 through 20 of Count One as if set forth in full herein.

38. The Hartford manifested a serious interest in plaintiff's list of names and "X dates" and in the acquisition of such lists and "X dates".

39. Nevertheless, prior to May 1, 1962 and continuing through all times pertinent to this complaint, defendant The Hartford agreed, contracted, combined, and conspired in restraint of trade with its independent agents, in writing, in practice and/or by custom of industry to restrict and restrain competition in the sale and ownership of lists of names and "X dates" as referred to in paragraphs 18 through 20 of Count One.

40. Between May 1, 1962 and September 30, 1962, and continuing at all times pertinent to this complaint, defendant The Hartford acted in furtherance of the unlawful aims and terms of the aforesaid agreements, contracts, combinations, conspiracies and custom of industry in restraint of trade referred to above some of which actions are referred to in paragraph 32 of Count Two.

41. Moreover in furtherance of the unlawful agreements, contracts, combinations, conspiracies and custom of industry in restraint of trade the defendant CAIA and other state associations of independent agents mounted a campaign of pressure and influence on the defendant The Hartford in order to obtain agreement by The Hartford to continue and enforce the unlawful restrictions and restraints on competition referred to above. Defendant The Hartford responded to said pressure and influence and thereby agreed in violation of the antitrust laws of the United States to restrain and restrict competition and to continue to restrain and restrict competition in the sale and ownership of lists of names and "X dates" as stated aforesaid.

42. The aforesaid agreements, contracts, combinations, conspiracies and custom of industry constituted per se violations of the federal antitrust laws in that in intention and practice and as directed to plaintiff they constituted:

(a) group boycotts;

(b) an attempt to eliminate and suppress competition;

(c) an attempt to insulate companies and independent agents from the competition envisaged and anticipated as a consequence of the free and unimpeded sale of lists of names and "X dates"as stated aforesaid;

(d) a concerted refusal to deal with individuals offering "X dates";

(e) a means of lessening price and quality

competition in the insurance business; and

(f) an attempt to monopolize the sale of "X dates" to agency writer insurance companies.

43. Plaintiff repeats and realleges the allegations of paragraphs 34, 35 and 36 of Count Two as if set forth in full herein.

COUNT FOUR

44. Plaintiff repeats and realleges the allegations of paragraphs 1, 2 , 4 and 12 through 20 of Count One as if set forth in full herein.

45. Defendant Aetna manifested a serious interest in plaintiff's list of names and "X dates" and in the acquisition of such lists and "X dates".

46. Nevertheless, prior to May 1, 1962 and continuing through all times pertinent to this complaint, defendant Aetna agreed, contracted, combined, and conspired in restraint of trade with its independent agents, in writing, in practice and/or by custom of industry to restrict and restrain competition in the sale and ownership of lists of names and "X dates" referred to in paragraphs 18 through 20 of Count One.

47. Between May 1, 1962 and September 30, 1962 and continuing at all times pertinent to this complaint, defendant Aetna acted in furtherance of the unlawful aims and terms of the aforesaid agreements, contracts, combinations, conspiracies and custom of industry in restraint of trade referred to above some of which actions are referred to in paragraph 32 of Count Two.

48. Moreover in furtherance of the unlawful agreements, contracts, combinations, conspiracies and custom of industry in restraint of trade the defendants CAIA and other state associations of independent agents mounted a campaign of pressure and influence on the defendant Aetna in order to obtain agreement by Aetna to continue and enforce the unlawful restrictions and restraints on competition referred to

above. Defendant Aetna responded to said pressure and influence and thereby agreed in violation of the antitrust laws of the United States to restrain and restrict competition and to continue to restrain and restrict competition in the sale and ownership of lists of names and "X dates" as stated aforesaid.

49. The aforesaid agreements, contracts,combinations, conspiracies and custom of industry constituted per se violations of the federal antitrust laws in that in intention and practice and as directed to plaintiff they constituted:

(a) group boycotts;

(b) an attempt to eliminate and suppress competition;

(c) an attempt to insulate companies and independent agents from the competition envisaged and anticipated as a consequence of the free and unimpeded sale of lists of names and "X dates" as stated aforesaid;

(d) a concerted refusal to deal with individuals offering "X dates";

(e) a means of lessening price and quality competition in the insurance business; and

(f) an attempt to monopolize the sale of "X dates" to agency writer insurance companies.

50. Plaintiff repeats and realleges the allegations of paragraphs 34, 35 and 36 of Count Two as if set forth in full herein.

COUNT FIVE

51. Plaintiff repeats and realleges the allegations of paragraphs 1, 2, 5 and 12 through 20 of Count One as if set forth in full herein.

52. Defendant The Travelers manifested a serious interest in plaintiff's list of names and "X dates" and in the acquisition of such lists and "X dates".

53. Nevertheless, prior to May 1, 1962 and continuing through all times pertinent to this complaint, defendant The Travelers agreed, contracted, combined, and conspired in restraint of trade with its independent agents, in writing, in practice and/or by custom of industry to restrict and restrain competition in the sale and ownership of lists of names and "X dates" referred to in paragraphs 18 through 20 of Count One.

54. Between May 1, 1962 and September 30, 1962 and continuing at all times pertinent to this complaint, defendant The Travelers acted in furtherance of the unlawful aims and terms of the aforesaid agreements, contracts, combinations, conspiracies and custom of industry in restraint of trade referred to in paragraph 32 of Count Two.

55. Moreover in furtherance of the unlawful agreements, contracts, combinations, conspiracies and custom of industry in restraint of trade the defendants CAIA and other state associations of independent agents mounted a campaign of pressure and influence on the defendant The Travelers in order to obtain agreement by The Travelers to continue and enforce the unlawful restrictions and restraints on competition referred to above. Defendant The Travelers responded to said pressure and influence and thereby agreed in violation of the antitrust laws of the United States to restrain and restrict competition and to continue to restrain and restrict competition in the sale and ownership of lists of names and "X dates" as stated aforesaid.

56. The aforesaid agreements, contracts, combinations, conspiracies and custom of industry constituted per se violations of the federal antitrust laws in that in intention and practice and as directed to plaintiff they constituted:

(a) group boycotts;

(b) an attempt to eliminate and suppress competition;

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(c) an attempt to insulate companies and independent agents from the competition envisaged and anticipated as a consequence of the free and unimpeded sale of lists of names and "X dates" as stated aforesaid;

(d) a concerted refusal to deal with individuals offering "X dates";

(e) a means of lessening price and quality competition in the insurance business; and

(f) an attempt to monopolize the sale of "X dates" to agency writer insurance companies.

57. Plaintiff repeats and realleges the allegations of paragraphs 34, 35 and 36 of Count Two as if set forth in full herein.

COUNT SIX

58. Plaintiff repeats and realleges the allegations of paragraphs 1 and 2, 6 through 10 and 12 through 20 of Count One as if set forth in full herein.

59. Each of the defendant direct writer insurance companies manifested a serious interest in plaintiff's list of names and "X dates" and in the acquisition of such lists and "X dates".

60. Between May 1, 1962 and September 30, 1962 the defendants All State, Liberty Mutual and State Farm (the direct writer companies) all combined, conspired and agreed to engage in a course of deliberately interdependent consciously parallel action in refusing to deal with plaintiff.

61. The purpose of said action was to restrain competition in the sale of automobile insurance policies by jointly refusing to purchase lists of names and "X dates" from an independent source.

EFFECT

62. The aforesaid violations have had, among others, the following direct effects:

(a) The elimination, suppression and unreasonable restraint of competition and trade in the sale of insurance policies, both original and renewals, in the State of Connecticut and various other states of the United States. This elimination, suppression and unreasonable restraint of competition and trade was detrimental not only to plaintiff but also to individual automobile insurance policy holders who were deprived of the opportunity of purchasing comparable insurance at lower prices or better insurance at the same price.

(b) The destruction of the plaintiff's business and properties, as hereinafter more fully described.

63. As a result of the defendants' unlawful conduct as aforesaid, the plaintiff's reasonable expectancy of marketing and selling millions of lists of names and "X dates" per year to the insurance companies in the State of Connecticut and other states of the United States on a local and national scale was destroyed.

64. As a further result of the defendants' unlawful conduct, the plaintiff's business was destroyed with the consequent loss of the plaintiff's reasonable expectancy of trade and profit, its initial capital investment, its costs and expenses in developing its method, and its other related costs.

WHEREFORE, plaintiff prays:

(a) That the conduct of defendants as herein alleged be adjudged and decreed to be in violation of the said anti-trust laws;

(b) That judgment against each of defendants jointly and severally be entered in favor of plaintiff for Fifteen Million ($15,000,000.00) Dollars damages and that said damages be trebled in accordance with law together with interest, the costs of suit, including a reasonable attorney's fee; and

(c) That such other and further relief as may be necessary and appropriate and to which plaintiff may be entitled.

Dated: November 8, 1971.

THE PLAINTIFFS,
MODERN HOME INSTITUTE, INC.
ROMAC RESOURCES, INC.

By _____
Joel C. Karp
A member of the firm Schine,
Julianelle, Karp, Gerety & Bozelko
855 Main Street
Bridgeport, Connecticut 06603

By _____
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855 Main Street
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06603

THEIR ATTORNEYS

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROMAC RESOURCES, INC. and MODERN HOME INSTITUTE, INC.	)	
v.	)	CONSOLIDATED CIVIL ACTION NOS. 11,386 and 11,464
HARTFORD ACCIDENT AND INDEMNITY COMPANY, ET AL	)	

SUMMARY JUDGMENT

This cause having come on for consideration on defendants' motions for summary judgment and the Court having rendered its Ruling on Motions for Summary Judgment under date of June 18, 1974, granting said motions,

It is ORDERED and ADJUDGED that summary judgment be and is hereby entered in favor of the defendants dismissing these actions, with costs to the defendants.

Dated at New Haven, Connecticut, this 21st day of June, 1974.

SYLVESTER A. MARKOWSKI
CLERK, UNITED STATES DISTRICT COURT

By _____
Deputy In Charge

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FILED

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROMAC RESOURCES, INC. and MODERN HOME INSTITUTE, INC.	:	
	:	CONSOLIDATED CIVIL ACTION
v.		NOS. 11,386 and 11,464
	:	
HARTFORD ACCIDENT AND INDEMNITY COMPANY, ET AL.	:	

RULING ON MOTIONS FOR SUMMARY JUDGMENT

This is an action for treble damages by two related plaintiffs against several Hartford-based casualty insurance companies charging them with Sherman Act violations predicated on an alleged group boycott.

The action was begun by Romac Resources, Inc. (No. 11,386) on April 15, 1966. Seven weeks later another action was brought by Modern Home Institute, Inc. (No. 11,464), the parent of Romac. Both complaints named the same defendants, and, since their allegations were identical, the two cases were consolidated on June 29, 1966. The case has a long history, not unusual in cases of this nature. When it reached its present stage, which calls for rulings on the several defendants' motions for summary judgment, the judge before whom it had been pending and the parties agreed that the case should be transferred to me and that I might decide the pending motions on the papers and briefs without the benefit of oral argument.

The gist of the complaint in both cases is that twelve insurance companies, Hartford Accident and Indemnity Company and Hartford Fire Insurance Company ("The Hartford"), The Aetna Casualty and Surety Co. ("Aetna"), The Travelers Insurance Company and The Travelers Indemnity Co. ("Travelers"), Allstate Insurance Company, Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company, Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Company, State Farm Mutual Insurance Company and State Farm Fire and Casualty Company, and The Connecticut Association of Independent Insurance Agents, Inc. ("CAIA"), contracted, contrived and conspired with each other in refusing to purchase from the plaintiffs a list of the names of holders of automobile insurance policies with the dates on which their policies expired ("X-dates").

Fives years later, in 1971, plaintiffs filed an Amended Substituted Consolidated Complaint. This added allegations as to separate conspiracies among the direct writers, among the agency companies, among the agency companies and their individual agents, and among the agency companies and CAIA. Plaintiffs also interjected into the pleadings the theory that the defendants were liable under the doctrine of conscious parallelism. At the second pre-trial conference on September 28, 1972, the plaintiffs advised the Court that they had decided to dismiss the action against the "direct writers" of

insurance since under the plaintiffs' theory of the case only those "agency" companies dealing with independent agents were involved in the alleged conspiracy. Stipulations were subsequently filed dismissing all of the direct writer defendants. The remaining defendants are The Hartford, The Travelers, The Aetna, and CAIA. The litigation to date has consumed seven years, reflected by roughly 150 pleadings, numerous exhibits, affidavits, and approximately 5,000 pages of deposition testimony.

I.

A. Nature of Plaintiffs' Business

Modern Home Institute, Inc. is a New York corporation; its wholly owned subsidiary, Romac Resources, Inc., was organized in New York in 1962 with a capitalization of approximately $500, to act as an agent for the sale of X-dates. From 1958 until 1962 Modern Home was engaged in the business of gathering information known as "family profiles" and selling this information to various merchants. For example, an individual would be contacted by telephone and requested to give such information as his name, address, number of children, the number of automobiles and appliances his family owned, and other similar information. The data so compiled was sold to retail merchants at ten cents per name.

In September 1960, Modern Home established an office in Cleveland, Ohio in furtherance of its family profile business and Mr. Robert D'Arpa, who is the Secretary and a director of the corporation, was placed in charge of the operation. Mr. D'Arpa leased an office and obtained personnel on a part-time basis to gather necessary information by telephone. Mr. D'Arpa ran this office for only seven months, until April of 1961.

It was during this seven-month period of time that the idea of acquiring lists of X-dates of automobile insurance policies and selling such lists to insurance companies was explored. An agent from Nationwide Insurance Company in Cleveland approached Mr. D'Arpa and asked if Modern Home could acquire expiration dates for automobile insurance policies. It was by virtue of this chance request that Modern Home first entered into the business of acquiring and selling expiration dates. Modern Home furnished the Nationwide agent with some expiration dates, but shortly thereafter it was forced to close its Cleveland office and abandon its family profile business. Mr. D'Arpa thereupon returned to New York to concentrate on soliciting and selling expiration dates.

A year went by and then, between May and August of 1962, the plaintiffs sought to market lists of expiration dates by attempting to sell them to, inter alia, the insurance companies who remain as named defendants in this case. The

business did not go very well. Romac had taxable income of only $515.46 in 1962, and never engaged in business after that year.

B. Plaintiffs' Approaches to Defendants

In 1962, plaintiffs approached several insurance companies in an attempt to sell the X-dates. They would sell a very limited number of X-dates on a trial basis, and if the purchaser contracted for their product, they would thereafter seek to recruit personnel and obtain a larger quantity of X-dates: their thought was that they would sell the same list of X-dates to two--and only two--insurance companies. One would be a "direct writer," such as Allstate, Nationwide or State Farm, and the other would be a "stock" or "agency" company, such as The Hartford, The Travelers, or The Aetna.[1/] The sale price would be 45 cents a name to each of the two companies, so that plaintiffs would realize 90 cents a name. It was stipulated by plaintiffs that the purchasing companies would have to take the entire output of X-dates generated by plaintiffs. Mr. D'Arpa testified that plaintiffs contacted "approximately 30" insurance companies.

1/ A direct writer sells through its salaried sales force, which promotes only the line of insurance sold by the employer. An agency company obtains insureds through placement of risks with it by independent agents, who are not employed by any insurance company, and who usually are able to, and do, place risks with more than one agency company.

Every one of the 30 insurance companies, without exception, rejected the plaintiffs' offer. The rejections took place in 1962, the year the offers were extended. More detailed information with respect to the circumstances under which the three insurance companies being sued rejected the plaintiffs' proposal was obtained during the course of pre-trial proceedings.

1. The Aetna Casualty and Surety Company

The Aetna Casualty and Surety Company was first contacted by the plaintiffs on or about May 8, 1962. Mr. D'Arpa came to The Aetna Home Office at Hartford and presented the plaintiffs' proposed plan to Mr. Ellis, Secretary at The Aetna, whose responsibility was mainly sales of private passenger automobile insurance. Mr. D'Arpa proposed to sell private passenger automobile expiration dates to "one so-called direct writer, and the same list to one so-called stock agency company." He made it clear that he would not be in a position to contract to sell their X-dates until he talked to other companies since he wanted to sell to the one that could use the greatest number. A quantity of X-dates was offered on a trial basis and Mr. Ellis agreed to buy 100 for a trial test. Mr. D'Arpa asked about the automobile insurance business, how it was sold and marketed and so on. Mr. Ellis told him everything he wanted to know.

Mr. Ellis arranged for Mr. Healy, Manager of the Agency Department in the Aetna's Newark Branch Office, to conduct a trial test of X-dates. On or about May 12, 1962, Mr. Healy received 100 X-dates from Mr. D'Arpa and on May 14, 1962, Mr. Ellis received the invoice from Romac in the amount of $30 for 100 X-dates at 30 cents each.

The plaintiffs next contacted Aetna in late June or early July 1962. At that meeting Mr. D'Arpa introduced Mr. Ellis to Mr. Max Wallach, the president, controlling stockholder and a director of Modern Home Institute, Inc. In response to inquiries by plaintiffs, Mr. Ellis explained the relationship of an agency company to its agents and the standard provision of a stock agency company's agency agreement with its agents concerning expirations.[2/] Shortly before this meeting the Connecticut State Insurance Commissioner had made a public statement against the sale of X-dates which was disturbing to Mr. Wallach and to Mr. D'Arpa.[3/] This was discussed.

Connecticut Insurance Commissioner

There was no discussion of a contract for X-dates because no contract was contemplated while the trial X-dates

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2/ This is discussed more fully at pp. 15-17, infra.

3/ It was not feasible to buy or use X-dates in Connecticut because the Insurance Commissioner had stated that the sale of X-dates was contrary to the agency licensing laws of the state and that non-licensed persons who solicited X-dates would be prosecuted. See note 5, infra.

were being tested in Newark and while the plaintiffs were still investigating or considering the markets for their products. Neither at the initial interview on May 8, 1962, nor at this luncheon was any estimate given of numbers of X-dates the plaintiffs proposed to offer. There was a discussion of different geographical areas for which they could supply X-dates. Mr. Ellis ruled out Massachusetts because The Aetna was not selling its automobile liability policies there. Mr. Wallach and Mr. D'Arpa were vague about supplying X-dates on a national scale as they did not then have the organization but thought they could build one in places where they were then active.

On July 9, 1962, Mr. Healy submitted a preliminary report to Mr. Ellis on the trial test of X-dates in New Jersey. The amount of business developed was minimal.

On July 10, 1962, Mr. Ellis and Mr. Van Gils, Vice President of The Aetna, went to the office of the plaintiffs in Pelham, New York, and met with Mr. D'Arpa and Mr. Max Wallach. The purpose of the visit was to become acquainted with the plaintiffs' facilities and to find out exactly what would be expected of each party if The Aetna were to enter into some sort of agreement to buy X-dates. Some of The Aetna's problems were outlined including the fact that in order to avoid furnishing X-dates of one Aetna agent to another competing in the same area, see p. 11, infra, all X-dates would need to be cleared with The Aetna's records and

branch office records, and that Massachusetts would have to be excluded. The number of X-dates that the plaintiffs proposed to sell came up for the first time. The plaintiffs expected to generate about 9,000,000 X-dates a year for several years. At 45 cents each the total cost would be in excess of $4,000,000 a year.

Mr. Ellis and Mr. Van Gils came away from the conference with the definite understanding that unless they took the total number of X-dates to be generated, amounting to 8,000,000 to 10,000,000 a year, they could not have any. On the trip home from Pelham they mutually arrived at a decision against the proposal. They discussed at some length the quantity involved, the feasibility of its use and the total expense of it. They discussed the possibility of agents sharing a major part of the cost.

On July 16, 1962, it was announced at the weekly Aetna Agency Department Staff meeting that The Aetna had concluded that it would not purchase the X-dates offered by Romac Resources, Inc. The minutes of the Agency Department Staff meeting for July 16, 1962, contain the following:

> "Mr. Ellis discussed the meeting that he and Mr. Van Gils had with Romac Resources, Inc. that they had on Tuesday, July 10. It has been concluded that we will not avail ourselves of their service of obtaining x date[s]. A memo to our Field Office setting forth a reason for not subscribing to this service will be sent in the future."

On July 17, 1962, Mr. Ellis mailed to Mr. D'Arpa a letter stating that The Aetna declined to accept Romac's offer.

2. The Hartford Companies

At the beginning of May 1962, during the same period when the plaintiffs were discussing their proposal at Aetna, Mr. D'Arpa contacted Mr. Frank Cox of The Hartford, who referred him to Mr. Channing Barlow. On May 3, 1962, D'Arpa phoned Barlow, briefly described the proposal of Romac to sell expiration dates to The Hartford, and requested a meeting for the following week.

On May 8, 1962, at 2:00 P.M., in a meeting at The Hartford's offices, D'Arpa outlined his proposal to Barlow and his associates, Mr. John Gilmore and Mr. Kenneth Cagney. The basic proposal was that Romac and Modern Home would supply on an exclusive basis to only two insurance companies, lists of automobile insurance policyholders, their addresses and the dates of expiration of their respective policies. The lists were to be broken down by geographic areas and would be compiled from telephone interviews, as had been done in the Cleveland experiment.

Mr. Barlow's first and primary concern about the proposal made to The Hartford was about its quality--could certain depressed areas be eliminated, could D'Arpa actually put together a viable organization, and could the names of the issuers of the policies be supplied? At the end of their

meeting Barlow told D'Arpa that, while he personally was interested, the proposal would require a considerable amount of thought and investigation; it presented some serious problems.

One problem was that Romac was not prepared to supply the name of the insurer along with the name of the policyholder, and thus The Hartford, if it purchased the lists, would be paying for the names of its own policyholders. Unless a great deal more work was done on the lists to sort out those names before they were sent out to agents, some of those solicited would be existing Hartford policyholders. Moreover, unless the names of both the policyholder's existing insurer and of his agent were known, The Hartford could not use the information without causing serious problems in its relations with agents. The independent agents with whom The Hartford deals are not its employees and many, if not most, of them deal with other insurers as well. In cities where The Hartford has more than one agent, it might well be supplying one agent with information about the customers of another agent.

Another problem was the high cost of the Romac proposal. On purely a test basis the names were to cost 30 cents each, and thereafter the price was to go up to 45 cents per name. In comparison The Hartford had been paying the Ruben H. Donnelly Company about two cents per name for lists of names

and addresses of automobile owners by geographic area. Another shortcoming was that the Romac proposal was not being offered on a wholly exclusive basis.

All these problems were discussed among Messrs. Barlow, Gilmore and Cagney immediately after the meeting with D'Arpa on May 8, 1962. Because of the agency relations problems Gilmore immediately advised against utilizing the proposal, but in spite of these negative impressions the proposal was discussed with other officers at The Hartford, and it was not until late in May 1962 that a final decision was reached not to purchase the lists of names from Romac.

At the same time, Barlow realized that the difficulties that The Hartford would have in making use of the Romac proposal might not be experienced by other insurance companies. It was virtually certain that no agent relations problems would be experienced by a "direct writer" company, with its captive, employee sales force. In view of this Barlow and his colleagues thought that The Hartford's agents should be alerted to the substance of the Romac proposal.

At a staff meeting on May 21, 1962, the decision was made not to buy the Romac proposal and to send a bulletin to all Hartford agents. On May 31, 1962, Mr. Barlow wrote Mr. Wallach of Romac and informed him that The Hartford had decided not to purchase the lists of names. The final draft of the letter to agents was prepared and released by June 6, 1962.

3. The Travelers

On April 18, 1962, two weeks before D'Arpa first contacted the Aetna representatives, Mr. John R. Coakley, the superintendent of agencies of The Travelers' casualty department, and Mr. Audrow Nash, who is now deceased, met with Mr. D'Arpa and Mr. Wallach concerning the sale of X-dates. The plaintiffs offered to provide Travelers with lists of the expiration dates of automobile insurance policies on a geographical basis. Wallach and D'Arpa were advised by Coakley and Nash that neither of the latter gentlemen had the authority to decide whether or not Travelers would purchase such a product, but that the matter would be discussed with Mr. Virgil Roby, their immediate superior, who could make such a decision.

Coakley and Nash advised Roby of the proposal which had been submitted by the plaintiffs and Roby immediately rejected it. When deposed, Mr. Roby testified that upon hearing the proposal he stated, "I reject it. Absolutely." His reason for rejecting the plaintiffs' proposal was because it undermined the principles of the American Agency System.

By letter to Coakley dated May 15, 1962, Romac outlined the substance of the proposal which had previously been set forth orally at the meeting on April 18, 1962. Coakley immediately acknowledged receipt of that letter by telephone, and on May 18, 1962, wrote D'Arpa advising him that Travelers

would not purchase the plaintiffs' expiration dates "because of the Travelers' commitment to the independent system of agency representation (that is, the ownership of expiration by the agent himself) . . . ." Mr. Coakley added that the Travelers would consider the idea of offering the X-dates to its independent agents, to be purchased by them,"but at the present time the Travelers will not pay for this information itself." This was two weeks before The Hartford had rejected the proposal, and two months before The Aetna rejected it.[4/]

Subsequently, on June 25, 1962, when it became known that X-dates were being offered by the plaintiffs to other insurance companies, Mr. Roby directed that a letter be sent by his managers to Travelers' agents which stated that Travelers would not purchase such lists because ownership of X-dates was the property of the agent. On July 5, 1962, Travelers sent a letter to its own agents advising them that Travelers had been offered lists of expiration dates for automobile insurance policies, but that the proposal had been rejected.

II.

I turn next to consider the antitrust implications presented by the foregoing narrative of facts.

4/ The Hartford's letter to its agents went out on June 6, 1962. Aetna's rejection was on July 17, 1962.

A. The Relevant Market

Whenever an issue involving an alleged violation of the antitrust laws arises, an initial, and sometimes pivotal, point of the case depends upon a determination of what constitutes the "relevant market"--the line of commerce affected by the alleged conspiracy. While the relevant market is usually defined in terms of a product market and a geographical market, it has been taken for granted by the parties to this case that the relevant geographical market encompasses all 50 states of the Union. The Court accepts this assumption and will proceed to examine the relevant market solely in terms of the product in issue--automobile insurance expiration dates.

Initially it may be useful to consider the character of an X-date as a useful lead to a prospective buyer of an insurance policy, in the context of "trade or commerce" as used in § 1 of the Sherman Act, 15 U.S.C. § 1, making illegal "[e]very contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." As distinguished from direct-writing insurance companies (such as those who were dropped as defendants in this case) who solicit insurance directly through their own employees, the present defendants obtain insureds through the efforts of independent

businessmen operating under the American Agency System. In the use of that system there is no direct solicitation by the company. The "agent" who solicits automobile liability risks collects the premiums from the insured and in turn is liable to the company for the amount of the premiums less his commission. The policy is issued by the agent, and countersigned by him; he has the power to cancel the policy during its term. He also acts as "agent" for competing insurance companies, and may choose in which of these he will place a particular risk. Although called an "agent" the relationship has been distinguished as being rather that of an independent contractor. See Hedlund v. Farmers Mutual Auto. Ins. Co., 139 F.Supp. 535 (D. Minn. 1956). Cf. Northwestern Mut. Life Ins. Co. v. Tone, 125 Conn. 183 (1939). That this particular relationship of an insurance agent to the company whose policies he sells is not in law one of principal and agent is so thoroughly established that it has come to be known in the law as the American Agency System, and the legal consequences of that relationship have been given effect by judicial decisions. Thus the court in Hedlund, supra, found it well established that upon termination of an insurance agency, whereby an independent agent has solicited business for the company, unless the agent is indebted to the company, all rights in the expiration dates of existing insurance procured by the agent belong to him. 139 F.Supp. at 537. And in

Nelson v. Farmers Mutual Automobile Ins. Co., 4 Wisc.2d 36, 90 N.W.2d 123, 135 (1958), the court noted that under the American Agency System the exclusive right in an insurance agent of contacting his customers for the purpose of renewing the policies is called "ownership of renewals and expirations, and is sometimes called the American Agency System." See also Ballagh v. Polk-Warren Mut. Ins. Assn., 257 Iowa 1334, 136 N.W.2d 496, 501 (1965). Insurance companies operating under the American Agency System, and the courts as well, recognize that the "agent" has a right in X-dates analogous to that he would have in a trade secret. See Rest., Torts, § 757, comment b (1939), quoted with approval in Town & Country House & Homes Service, Inc. v. Evans, 150 Conn. 314, 318 (1963). The insured customer is, of course, free to place his insurance with anyone he pleases, or to give out the information about the X-dates on his own policies. Still, it seems most unlikely that an insured who disclosed the X-date on his automobile policy to the plaintiffs did so for the purpose of enabling the plaintiffs to sell that information to an insurance agent of their own choice and for their sole benefit.

From another side there is law which affords a degree of protection to the policyholder who is a potential customer for a renewal of his present policy against the full blast of competitive forces. Not only are the terms and rates of such insurance policies subject to regulation by the states, but

most states, as an additional measure to protect insureds against the risk of dealing with incompetent or unscrupulous agents, require agents and brokers who solicit insurance business to be licensed. Since the X-dates were to be used for the purpose of further solicitation of insurance, their acquisition by the plaintiffs could have been deemed a first step in such solicitation. This was the import of a public statement made by the Insurance Commissioner of Connecticut, who announced that the plaintiffs' collection and sale of X-dates in Connecticut would subject them to penalty under Conn. Gen. Stats. § 38-71 for acting as unlicensed insurance agents.[5/]

5/ Although it does not seem indisputable that the acquisition and sale of an X-date is a solicitation of insurance, it cannot be gainsaid that X-date data can ultimately generate income only in the hands of a licensed agent who through the use of such data sells insurance to customers whom he would not otherwise have contacted. The Commissioner's determination that dealing in X-dates constitutes the solicitation of insurance is entitled to great deference, since it represents the interpretation of a statute by the administrator charged with its administration. See Udall v. Tallman, 380 U.S. 1, 16 (1965).

It should be noted that Connecticut's regulation of insurance solicitation has been expressly exempted from the otherwise superseding effect of federal law. The McCarran-Ferguson Act, 15 U.S.C. § 1012(b), provides that:

> "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended,

B. Grounds for Plaintiffs' Opposition to Summary Judgment

1. Plaintiffs' Burden to Produce Evidence

The plaintiffs cannot defeat defendants' motions for summary judgment on the mere hope that they may be able to discredit by cross-examination at trial the defendants' denials of any conspiratorial conduct in their respective rejections

5/ continued

> known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

The Supreme Court has stated that this Act "did not purport to make the States supreme in regulating all the activities of insurance companies; its language refers not to the persons or companies who are subject to state regulation, but to laws 'regulating the business of insurance.' Insurance companies may do many things which are subject to paramount federal regulation; only when they are engaged in the 'business of insurance' does the statute apply. . . . [W]hatever the exact scope of the statutory term, it is clear where the focus was--it was on the relationship between the insurance company and the policy holder. Statutes aimed at protecting or regulating this relationship, directly or indirectly, are laws regulating the 'business of insurance.'" (Emphasis in original.) S.E.C. v. National Securities, Inc., 393 U.S. 453, 459-460 (1969).

It thus appears that while approval and licensing of X-date dealing and dealers by state insurance authorities might remove such business from the ambit of federal antitrust law, the disapproval by state authorities of trafficking in X-dates places the traffickers between the state government's Scylla and the federal government's Charybdis. If punitive action by the state is successfully defended against by establishing that X-dates do not fall within state statutes regulating the business of insurance, then the X-date dealers are ipso facto open to federal antitrust liability. As I discuss hereinafter, see pp. 27 et seq., infra, the risk of such liability seems considerable when the sale of X-dates is proposed on an exclusive basis.

of plaintiffs' proposal. Cf. Dyer v. MacDougall, 201 F.2d 265, 269 (2d Cir. 1952). Under Rule 56(e), Fed. R. Civ. P.,[6/] a plaintiff opposing summary judgment bears "the burden of producing evidence of the conspiracy he alleged . . . after [the defendant has] conclusively showed that the facts upon which [the plaintiff] relied to support his allegation were not susceptible of the interpretation which he sought to give them." First Nat. Bank v. Cities Service, 391 U.S. 253, 289 (1968). The Supreme Court has decisively rejected the notion that "Rule 56(e) should, in effect, be read out of antitrust cases [so as to] permit plaintiffs to get to a jury on the basis of the allegations in their complaints, coupled with the hope that something can be developed at trial in the way of

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6/ Rule 56, Fed. R. Civ. P., provides in pertinent part:

> "(c) . . . [Summary] judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .
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> " . . . .
>
> "(e) . . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

evidence to support those allegations . . . . While we recognize the importance of preserving litigants' rights to a trial on their claims, we are not prepared to extend those rights to the point of requiring that anyone who files an antitrust complaint setting forth a valid cause of action be entitled to a full-dress trial notwithstanding the absence of any significant probative evidence tending to support the complaint." Id. at 289-290.

2. Conscious Parallelism

The plaintiffs freely admit that in support of their basic contention that the defendants conspired to reject their proposal, they are unable to set forth specific facts in opposition to defendants' motions for summary judgment. The plaintiffs rely instead on the doctrine of "conscious parallelism" to supply an inference of conspiratorial conduct by the defendants of sufficient evidentiary weight to defeat the defendants' motions for summary judgment and to get their case to the jury at trial. "But [the Supreme] Court has never held that proof of parallel business behavior conclusively establishes agreement or, phrased differently, that such behavior itself constitutes a Sherman Act offense. Circumstantial evidence of consciously parallel behavior may have made heavy inroads into the traditional judicial attitude toward conspiracy; but 'conscious parallelism' has not yet read conspiracy out of the Sherman Act entirely." Theatre Enterprises v.

Paramount, 346 U.S. 537, 541 (1954). As Professor Turner has observed: "[I]dentical but unrelated responses by a group of similarly situated competitors to the same set of economic facts . . . is not 'agreement' by any stretch of the imagination. . . . The point is that conscious parallelism is never meaningful of itself, but always assumes whatever significance it might have from additional facts." Turner, The Definition of Agreement under the Sherman Act: Conscious Parallelism and Refusals to Deal, 75 Harv. L. Rev. 655, 658 (1962). See Kreager v. General Electric Co., ___ F.2d ___, ___, slip. op. 3455, 3462 (2d Cir. May 13, 1974); Independent Iron Works, Inc. v. United States Steel Corp., 322 F.2d 656, 661 (9th Cir. 1963), cert. denied 375 U.S. 922.

The additional facts on which the plaintiffs rely tc add flesh to the bare bones of their "conscious parallelism" theory of conspiracy are facts which plaintiffs contend establish that the identical courses of action taken by the defendants were, absent an agreement or understanding to act in concert, contrary to each defendant's individual self-interest. See Turner, supra, at 658-659. What the plaintiffs assert to be so irresistible about their proposal is the substantial competitive advantage the exclusive knowledge of X-dates would give the purchaser over the other companies in the solicitation of any automobile insurance sales just prior to expiration--the most advantageous time to obtain a new customer.[7/]

7/ It should be noted that the plaintiffs did not make any concrete offer to sell X-dates to any particular defendant. They

III.

Consideration of whether it was contrary to the defendants' self-interest to reject the plaintiffs' proposal is, by virtue of the plaintiffs' reliance on conscious parallelism, the central element in the determination of the motions for summary judgment.

A. Unsuitable Characteristics of Defendants' Business

1. No Prior Dealing in X-dates

In the first place it is of fundamental significance that the defendants herein had not previously been in the business of buying or selling X-dates. Unlike the usual refusal-to-deal case, where a group by agreement refuses to buy from one seller a product which it buys from others, this

7/ continued

invited offers from the defendants and from numerous other insurance companies, reserving to themselves the right to select which offer they would accept. And in so reserving the right to themselves to select which one agency insurance company they would deal with on an exclusive basis, the plaintiffs did not limit their choice to among any offers which might have been made by the defendants in this case. Thus the defendants could not, by their own collusive refusal to deal with plaintiffs, have protected their flanks against the possibility that some other insurance company would elect to deal with the plaintiffs and hence secure exclusive access to the plaintiffs' X-dates. The defendants' refusal to bid on the plaintiffs' proposal did nothing to prevent the plaintiffs from selling their X-dates to other potential customers, including dozens of competing insurance companies and thousands of independent insurance agents.

is a case where no member of the defendant group had or has ever bought X-dates. The defendants' refusal to embark on this new undertaking accordingly cannot be classified as boycotting or blacklisting. Since the plaintiffs have never purchased X-dates from anyone else, it is patently illogical for the plaintiffs to contend that they were being excluded from a nonexistent list. The plaintiffs were not being denied access to a product market open to others.

A distinction has to be made between a proposal to adopt a new practice or policy and the discriminatory application of an existing practice or policy. The plaintiffs' reliance on Klor's v. Broadway-Hale Stores, 359 U.S. 207 (1959), is misplaced. In Klor's there was a refusal by a group of manufacturers of household appliances and their distributors to sell their products to a certain retailer, at the behest of others with whom they did deal. Although competitive appliances were available to Klor's from other manufacturers and distributors, the Court condemned the combination's refusal to sell to Klor's the same products on the same terms as they were sold to others. The Court found in this conduct a "creeping" tendency to create a monopoly, since the destruction of an individual competitor was the apparent objective of the combination. 359 U.S. at 213-214. The X-date is a tool which may be useful in the hands of the independent agent, or a salesman working for one of those insurance companies which sell insurance policies directly through their

own employees. But it is not a product which the defendant companies buy or sell. There is no evidence that they have ever acted as distributors of X-dates.

2. Dependence on Independent Agents

Unlike direct writers of insurance, the defendants must rely on independent insurance agents for the sale of their insurance. See note 1, supra. Given the American Agency System's recognition of an agent's property right in the expiration dates of policies he has sold, see pp. 15-17, supra, the defendants could reasonably anticipate a hostile reaction by independent agents to the proffering of X-dates by an agency insurance company.[8/] Moreover, unlike a direct writing company, an agency company could not simply supply its agents with X-dates obtained through the plaintiffs. An agency company has no control over which insurance companies an independent agent may ask to insure risks solicited by him.

8/ This is an appropriate place to note that the defendant CAIA, an association of Connecticut insurance agents, is not a competitor of any of the defendant insurance companies and that the plaintiffs never offered any proposal to it. The only apparent reason for making the association a party defendant emerges from the plaintiffs' argument that insurance agents, when they later learned of the plaintiffs' proposal, told the insurance companies that they were opposed to it. This they contend amounts to some kind of coercion to force the companies to reject the proposal. Apart from the fact that the decisions by the companies were made before the CAIA knew about them, the argument cuts against the plaintiffs' main contention that the rejections by the companies were the result of their having agreed among themselves to act in concert.

Thus the plaintiffs' proposal contemplated that an agency company would re-sell its X-dates to its independent agents. The anticipated antipathy of the independent agents to the concept of the marketing of X-dates could well have meant an agency company would have had no real resale market for X-dates, and hence no way to recoup the cost of acquiring these X-dates from the plaintiffs.

That the difference in business methods between agency companies and direct writing companies is of material significance is attested to by the fact that it was on this basis that the plaintiffs themselves viewed the two types of insurance companies as separate markets for their X-dates. The plaintiffs proposed to sell the same list of X-dates both to one agency company and to one direct writing company.

3. Inability to Absorb Entire Output of X-dates

This leads to consideration of another element in the plaintiffs' proposal. A condition of their proposal was that the company which the plaintiffs chose would be required to take all of the X-dates the plaintiffs would generate in the 50 states of the Union. This was estimated by the plaintiffs to be 9,000,000 X-dates each year. Thus the plaintiffs' proposal bore the heavy annual projected cost to any defendant of more than $4,000,000 per year.

The inherent commercial impracticability of the plaintiffs' proposal is illustrated by the impact the proposal

would have had on The Aetna had it extended and been held to the offer solicited by the plaintiffs. Aetna's total advertising budget was only about $1,000,000 annually, and it was trying to reduce that. Furthermore, not only were 9,000,000 X-dates per year far in excess of what Aetna could put to use, even if it could persuade its agents to buy them, but also many of the X-dates would be wholly valueless--those in areas where The Aetna lacked any facilities, and those which were X-dates of auto owners already insured by The Aetna.

The conclusion of The Aetna, arrived at after thorough consideration of the many factors involved, that the plaintiffs' price for its X-dates was too high, is brushed aside by the plaintiffs. They offer nothing but puffing chatter to rebut the reasoning which led to that conclusion. And it is clear from all the circumstances that the plaintiffs have not suddenly become so expert in the insurance business that their contrary opinion could be accepted as evidence.

B. Risk of Illegality of Plaintiffs' Proposed Exclusive Dealing Arrangement

If the plaintiffs are content to disregard the high cost of the X-dates to the defendants as a factor to support rejection of their proposal, then inherent in their contention that it was against the defendants' self-interest to reject the proposal can only be their selling argument that the competitive advantage which the exclusive right to obtain and

market X-dates would give was so complete that X-dates could be readily re-sold at any price the traffic would bear. But by this "exclusive" provision the plaintiffs created a problem of their own making. Curiously enough this "advantage" exposes a legal obstacle in the plaintiffs' proposal not adverted to by either party, and not briefed.

What is wrong about the plaintiffs' proposal in the context of the antitrust laws is not the defendants' negative response to it; it is the nonchalant assumption by the plaintiffs that an agreement to sell X-dates on a national scale exclusively to one insurance company would be lawful. Paradoxically, that so strongly emphasized feature of exclusiveness in the proposal made it risky for the defendants to accept it. While I reluctantly grab this bear by the tail, because the legality of the exclusive aspects of an accepted proposal is not now before the Court, its presence cannot be totally ignored. The issue is not whether the proposal should have been rejected as one which would result in an unlawful distribution system, but whether it was so fraught with elements of such a system that the <u>risk</u> of its illegality was substantial enough to justify the defendants' refusal to be a party to it. It would seem beyond cavil that had any one of the defendants entered into the agreement as proposed, there was considerable likelihood that it would be held to be in violation of the antitrust laws.

1. Vertical Restraints Subject to Rule of Reason

The plaintiffs' proposal for an agreement under which one agency company was to be granted the exclusive right to market the X-dates furnished by the plaintiffs is known as a vertical arrangement.[9/] While exclusive dealing provisions are not illegal per se, and certain exclusive territorial sales distributorships have been held not to violate the antitrust laws, see, e.g., Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd., 416 F.2d 71, 76 (9th Cir. 1969), cert. denied 396 U.S. 1062 (1970); ABA, Antitrust Developments 1955-1968, at pp. 16, 109 (1968), vertical arrangements are by no means entitled to blanket protection against the strictures of the antitrust laws. In addition to § 1 of the Sherman Act's prohibition on contracts in restraint of trade, § 3 of the Clayton Act, 15 U.S.C. § 14, makes illegal any contract for the sale of "goods," the effect of which contract "may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

In Tampa Electric Co. v. Nashville Co., 365 U.S. 320, 327 (1961), the Court construed § 3 of the Clayton Act as forbidding exclusive-dealing arrangements whenever "the court believes it probable that performance of the contract will

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9/ "Economic arrangements between companies standing in a supplier-customer relationship are characterized as 'vertical.'" Brown Shoe Co. v. United States, 370 U.S. 294, 323 (1962).

foreclose competition in a substantial share of the line of commerce affected." The Court also noted that § 3 was a "broader proscription" than §§ 1 and 2 of the Sherman Act. Id. at 335. In White Motor Co. v. United States, 372 U.S. 253, 263 (1963), the first antitrust case to reach the Supreme Court involving vertical arrangements creating a number of geographically limited exclusive sales agencies, the Court reserved decision on whether such arrangements should be treated as illegal per se under § 1 of the Sherman Act.[10/] The Court affirmatively applied a rule of reason to vertical arrangements in a later case, United States v. Arnold, Schwinn & Co., 388 U.S. 365, 374 (1967), observing:

> "[A] manufacturer of a product other and equivalent brands of which are readily available in the market may select his customers, and for this purpose he may 'franchise' certain dealers to whom, alone, he will sell his goods. Cf. United States v. Colgate & Co., 250 U.S. 300 (1919). If the restraint stops at that point--if nothing more is involved than vertical 'confinement' of the manufacturer's own sales of the merchandise to selected dealers, and if competitive products are readily available to others, the restriction, on these facts alone, would not violate the Sherman Act." 388 U.S. at 376.

See also Albrecht v. Herald Co., 390 U.S. 145, 153-154 (1968); id., 390 U.S. at 154 (concurring opinion).

10/ There were three dissenters in White Motor, Warren, Ch. J., Black, J., and Clark, J., who took the position that such vertical arrangements should be held forthwith to be per se violations.

2. Availability of Competing Products

In each of the above cases one factor considered as bringing vertical restraints within the rule of reason was the availability of competing products within the affected territories. This element of reasonableness is clearly not available in support of plaintiffs' proposed sale of exclusive rights to X-dates, since there exists no dispute as to plaintiffs' position that only through them could X-dates be obtained.

3. Intent to Monopolize

Another key factor in the determination whether a restraint of trade comports with the Sherman Act's rule of reason is "whether the action springs from business requirements or purpose to monopolize." United States v. Columbia Steel Co., 334 U.S. 495, 527 (1948). Here the exclusive-dealing arrangement proposed by the plaintiffs does seem to have been motivated by an effort to create a monopoly and to reap the fruits of monopoly power. On the basis of the negotiations between the parties as reflected by the record it is difficult to conceive of any reason for plaintiffs' insistence on restricting the marketing of X-dates to only one agency company for the entire United States other than to protect the plaintiffs' contemplated monopoly of the business in this

field.[11/] The advantages to some particular one of the defendants of the "exclusive right" among agency companies to obtain secret X-dates for all insured automobile owners in the United States were temptingly dangled before the defendants, and the possible danger from refusal subtly displayed. Although no portrait of the national market was drawn, the plaintiffs' own position was necessarily that their withholding of X-dates from all but one favored buyer would have a substantial impact on the market. The assumption that the plaintiffs' commitment to deal with only two insurance companies (one an agency company, the other a direct writer) would effectively foreclose other insurance companies from access to X-dates, due to the non-existence of any other companies collecting and marketing X-dates, was implicit in, and an inescapable pre-condition of, the plaintiffs' proposal.

4. Substantial Amount of Commerce Affected

The plaintiffs' proposed exclusive-dealing agreement, despite its apparent monopolistic intent, could not escape

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11/ That such a monopoly was the design of the plaintiffs is indicated by the price they proposed. The charge for X-dates which the plaintiffs set for the first batch they sold was 30 cents each; the price which the plaintiffs placed upon X-dates under the proposal for exclusive use was 45 cents each to two separate non-competing buyers, or a total of 90 cents. No examination into the cost of production is needed to understand that no appreciable cost would be incurred in multiplying the number of copies produced of lists of X-dates in order to make them available to hundreds of insurance companies--and thousands of insurance agents.

scrutiny under the antitrust laws as too insignificant in its effect on commerce. The dollar volume of the sales "locked up" by the proposed agreement was $4,000,000, twenty times the $200,000 figure held sufficiently substantial in Fortner Enterprises v. United States Steel, 394 U.S. 495, 501-502 (1969). Moreover, by virtue of the proposal's provision that the plaintiffs' entire output of X-dates would have to be purchased, the plaintiffs would have occupied the dominant position in the market, even if other producers of X-dates should seek to compete with the plaintiffs. Cf. Northern Pac. R. Co. v. United States, 356 U.S. 1, 7 (1958).

5. Rejection Not Contrary to Self-Interest

Any defendant which entered into the contract proposed by the plaintiffs would have run a serious risk of being in violation of the antitrust laws.[12/] Whether the plaintiffs'

12/ A thoroughly reasoned opinion by Judge Wyatt in United States v. Chicago Tribune - New York News Syn., Inc., 309 F. Supp. 1301 (S.D. N.Y. 1970), holds that an agreement by a copyright owner "not to license the features to any other newspaper published within an arbitrary and unreasonably broad territory surrounding the contracting newspaper's city of publication" (emphasis in original) states a claim of an unreasonable restraint of trade in violation of the antitrust laws. 309 F.Supp. at 1302. Judge Wyatt ruled that writings protected by the Copyright Act do not confer upon their owner any greater right to sell or license the use of the copyrighted material under exclusive-dealing agreements than that possessed by an owner of any other kind of property. It would thus seem, a fortiori, that agreements by which secret X-dates are sold or licensed for use so as to foreclose nationwide their dissemination to other than the agents of a single purchaser, might well constitute an unreasonable restraint of trade.

proposal would, if implemented, have led to actual antitrust liability does not have to be decided. X-dates may or may not be "goods" within the meaning of § 3 of the Clayton Act, and the plaintiffs' proposed exclusive-dealing arrangement for the sale of X-dates may or may not have been an "unreasonable" restraint under § 1 of the Sherman Act. All I conclude is that it is surely plausible that these questions might have been decided adversely to any defendant who dealt with the plaintiffs on the plaintiffs' terms. It follows that the Damoclean sword of antitrust liability which would have hung over the head of any defendant which had committed itself to deal with plaintiff, rendered acceptance of the plaintiffs' proposal so risky that rejection cannot be considered to have been contrary to any defendant's "self-interest."

C. Conclusion

There is no direct evidence that the defendants or some of them informed one another they were rejecting the plaintiffs' proposal. The plaintiffs do not assert that they informed the others that The Travelers had rejected their proposal, or that they informed The Aetna that The Hartford had also rejected it. But even if it is assumed, despite the absence of direct evidence of communication, that the defendants became conscious of the actions taken by each relative to plaintiffs' proposal, this leaves the plaintiffs short of supporting their contention that an inference of conspiratorial

conduct may be drawn from the evidence submitted under the rubric of "conscious parallelism."

There is nothing other than the simple fact that each defendant rejected the plaintiffs' proposal on which to base an inference of conspiracy. The arguments of the plaintiffs that it was against the self-interest of each defendant to reject their proposal are completely unsupported. To let a jury decide that it was against the self-interest of an insurance company to refuse to tender an offer to commit itself on an all-or-nothing basis to a $4,000,000-a-year investment in a virtually untested and as yet largely undeveloped product would be to let speculation rule the case. See Independent Iron Works, Inc. v. United States Steel Corp., supra, 322 F.2d 656; Delaware Valley Marine Sup. Co. v. American Tobacco Co., 297 F.2d 199, 205 (3d Cir. 1961), cert. denied 369 U.S. 839 (1962). It would be equally injudicious to allow the jury to have the opportunity to decide that the defendants were not justified in rejecting the proposal, even though its acceptance would expose them to a not inconsiderable risk of incurring criminal sanctions and of defending against a treble damage claim under the antitrust laws brought on behalf of a class potentially encompassing not only all competing agency companies, but also all independent insurance agents other than its own.

The defendants are not required to disprove the allegations of conspiracy in order to prevail on their motions for summary judgment, First Nat'l. Bank v. Cities Service, supra, 391 U.S. at 289-290. They have, by affidavits and depositions of facts as to which there is no genuine issue, made a showing so conclusive that the bare facts upon which the plaintiffs rely simply could not lead a reasonable man to agree with that interpretation which the plaintiffs argue should be extracted from them. To defeat the defendants' factually replete separate motions for summary judgment no more was required of the plaintiffs but that they come forward with something of substance in the way of evidence to in some way rebut the defendants' showing and to lend some support in reason to the plaintiffs' allegations. Cf. Poller v. Columbia Broadcasting, 368 U.S. 464, 473 (1962). This they have not done.

Accordingly, summary judgment should be entered in favor of the defendants, and, it is

SO ORDERED.

Dated at Hartford, Connecticut, this 18th day of June, 1974.

M. Joseph Blumenfeld
United States District Judge

FILED

JUL 2 8 30 AM '74

U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROMAC RESOURCES, INC. and MODERN HOME INSTITUTE, INC. :

V. : Consolidated Civil Action No. 11,386 and 11,464

HARTFORD ACCIDENT AND INDEMNITY COMPANY, ET AL :

NOTICE OF APPEAL

Plaintiffs in the above-entitled action hereby give notice that they appeal to the United States Court of Appeals for the Second Circuit the Summary Judgment entered by this court on June 21, 1974 in favor of all the defendants and against the plaintiffs.

THE PLAINTIFFS,
Romac Resources, Inc. and
Modern Home Institute, Inc.

By J. Daniel Sagarin

J. DANIEL SAGARIN, Their Attorney
Schless & Sagarin
855 Main Street
Bridgeport, Connecticut 06604

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, to all counsel on the attached service list of counsel on this 26th day of July, 1974.

J. Daniel Sagarin

J. DANIEL SAGARIN

SCHLESS & SAGARIN
ATTORNEYS AT LAW
855 MAIN STREET
PEOPLE'S SAVINGS BANK BUILDING
BRIDGEPORT, CONNECTICUT 06604

DEFENDANTS' AFFIDAVITS FILED IN

SUPPORT OF SUMMARY JUDGMENT

59aa

THE HARTFORD

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

MODERN HOME INSTITUTE, INC. and ROMAC RESOURCES, INC., Plaintiffs, -against- HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD FIRE INSURANCE CO., THE AETNA CASUALTY AND SURETY CO., THE TRAVELERS INSURANCE COMPANY, THE TRAVELERS INDEMNITY CO., ALLSTATE INSURANCE COMPANY, and THE CONNECTICUT ASSOCIATION OF INDEPENDENT INSURANCE AGENTS, INC., Defendants.	CIVIL ACTION NOS. 11386 and 11464

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN L. WARDEN, being duly sworn, deposes and says:

I am one of the attorneys for defendants Hartford Accident and Indemnity Company and Hartford Fire Insurance Company ("The Hartford") in this action. I submit this affidavit in support of The Hartford's Motion for Summary Judgment. The facts stated herein are based upon the depositions taken in this action and documents in The Hartford's files.

The original complaints in this action were filed on April 15 and June 8, 1966. On June 29, 1966 the cases were consolidated for all purposes. On December 29, 1971, plaintiff was granted leave to file an Amended Substituted Consolidated Complaint.

Wac

Discovery began on June 1, 1966 and continued through mid-1972. A total of 19 depositions have been taken in this case, 15 of which were taken by plaintiff of present or former employees of the defendant companies. Several extensive sets of interrogatories have been served upon the various defendants and all were answered in full.

The Hartford has produced to plaintiff's counsel hundreds of documents from The Hartford's files. Every request for document production from the plaintiff, whether formal or informal, has been fully complied with by The Hartford.

The events upon which this action is based took place in 1962. On May 8, 1962 Mr. Robert D'Arpa, an employee of plaintiff, met with Messrs. Channing Barlow, John Gilmore and Kenneth Cagney of The Hartford. Mr. D'Arpa outlined a proposal whereby plaintiff would sell to The Hartford, on a non-exclusive basis, lists of names of automobile insurance policyholders with the dates of expiration of their respective policies.

On May 9, 1962, the day after the above meeting, Mr. Max Wallach, president of the plaintiff corporation, wrote to Mr. Barlow confirming the proposal. (Copy attached hereto as Exhibit A)

During the meeting and thereafter, it was apparent to the personnel of The Hartford who were involved that there were serious difficulties with the Romac proposal. Mr. Gilmore has testified that he immediately advised against purchasing th lists. The matter was discussed at a staff meeting on May 21, 1962. The minutes of that meeting show that those present felt that the lists would only be

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valuable in those few cities where The Hartford had a sole agent. (See file copy of Barlow memo of 6/18/62, attached hereto as Exhibit B) The consensus of the meeting was that the proposal should not be accepted and that a letter should be sent to all Hartford agents giving them warning that someone would be soliciting their policyholders through use of expiration lists.

On May 31, 1962 Channing Barlow wrote to Mr. Wallach informing him that The Hartford was not interested in purchasing the lists. (Copy attached hereto as Exhibit C)

Thereafter Mr. Barlow sent a bulletin, dated June 6, 1962, to all Hartford agents telling them of the basic proposal and the fact that The Hartford had not purchased the lists. (Copy attached hereto as Exhibit D) Due to delays in the mail room, the June 6 bulletin was apparently not mailed promptly, but "dribbled out" over several days. (See TWX of Heringhi dated June 18, 1962 and response of Barlow dated June 27, 1962, attached hereto as Exhibits E and F) (A memorandum from Mr. Barlow to Mr. Gilmore dated June 1, 1962, copy attached hereto as Exhibit G, shows that Mr. Barlow had actually intended the bulletin to be mailed even prior to June 6, 1962)

Reaction to Mr. Barlow's bulletin of June 6, 1962 was swift and heated. Mr. Barlow received a number of irate letters from agents, some of whom believed Romac must be engaged in an illegal or unethical business. (Copies of representative letters attached hereto as Exhibits H and I) The field representatives of The Hartford were also receiving a large number of inquiries, had not been

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forewarned and had no information to give out. Because of this, Mr. Barlow prepared a Memorandum to Business Development Department Liaison Representatives, dated June 14, 1962, which would allow them to respond to basic questions. (Copy attached hereto as Exhibit J)

After similar inquiries continued to be received for several more days, Mr. Barlow mailed a second letter dated June 18, 1962, to all Hartford agents, explaining that the expiration lists were gleaned through telephone interviews and not from state motor vehicle departments or other confidential sources. (Copy attached hereto as Exhibit K) For the next several weeks The Hartford continued to get requests for information, which were answered in the same fashion; the names of the two plaintiff companies were never revealed.

Throughout this entire period no employee of The Hartford had any communication, direct or indirect, regarding the expiration date lists with any employee of any of the other companies presently or formerly defendants in this action. At the time The Hartford made its decision not to purchase the lists, May 21, 1962, and for many weeks thereafter, it was wholly unaware of what, if any, decision had been made or was contemplated by other insurance companies. (See depositions of Barlow, at 4107-08, 4114 and Gilmore, at 4067-68)

Although the plaintiffs claim that the June 6 bulletin was not mailed until June 13 and 16 and until after discussions with Mr. John Crosson of CAIA, there are letters in the files of The Hartford showing replies from agents

63aa

dated June 13, 1962. (Copies of letters attached hereto as Exhibits L and M) The first and only contact with Mr. Crosson was no earlier than June 13, 1962, because it is noted on a page of The Hartford's telephone log the first entry on which is dated 6/13/62. (Copy attached hereto as Exhibit N) Mr. Crosson is simply noted as having called, commended The Hartford for its position and requested copies of the June 6 and June 14 letters. (It is not clear whether Mr. Crosson called on June 13 or June 14, since the only other document pertaining to Mr. Crosson, copy attached hereto as Exhibit O, is a 3x7 inch piece of paper bearing his name, the date June 14, 1962 and the notation that he called The Hartford and had been sent the June 6 and 14 letters.)

Sworn to before me
this 8th day of June, 1973

GEORGE A. SCHOLZE
Notary Public, State of New York
Residing in Nassau County
Nassau Co. Clk's No. 30-3526250
Certificate Filed in
New York Co. Clk's Office
Commission Expires March 30, 1975

51aa

ROMAC RESOURCES, INC.

Researchers of Markets and Consumers

0 Fifth Avenue Pelham, New York OWens 9-2300

May 9, 1962

ng Barlow, Vice President
roup
5, Conn.

arlow:

confirm the proposal made to you yesterday by our Mr. Robert D'Arpa to
ur organization with the names of automobile insurance policy holders
the expiration dates of their policies.

ish this information to you on an individual report basis broken down
county and state areas. We will furnish these reports to you on a test
price of 30¢ each. It is our intention to deliver service on a semi
basis to two insurance underwriters who can take all the names we develop
. The price on a semi exclusive basis will be approximately 10¢ per report.

stood that certain depressed and undesirable areas will be eliminated by
ent. The information submitted will be exclusive to the two firms
or the first year. The names will be released from this condition thirty
the policy expiration dates.

intention of researching the names of the insurance underwriters of the
icy holders. It is understood further that all names submitted in
years will be new policy holders. The same names will not be submitted

hat we deliver to you on your initial order will be limited to those poli
se automobile insurance expires in the next ninety day period. In short
e you expiration dates falling due in the months of June, July and August.
ertain to the test period only.

cting for full service on the semi exclusive basis you will accept all
dless of date of expiration as they are developed.

at we can finalize our working arrangements with the two firms with whom
k, I would suggest that you make your tests as quickly as possible.

y strongly that your organization is one with whom we would like to work.

Very truly yours,

Mack Wallach
President

. Gilmore
Cagney

EXHIBIT A

65aa

52 aa

6/18/1962

Messrs. Cagney, Gilmore and the writer met with Robert D'Arpa of Romac Resources, Inc. at his request to discuss his offer to provide us with a list of automobile policyholders with their expiration dates. He explained his proposition in some detail and it tracks exactly with a letter dated May 9, 1962 from the president of that organization. Perhaps the only salient additional fact is that Mr. D'Arpa claimed an 85% effectiveness in any given territory.

It was rather immediately apparent to Messrs. Gilmore, Cagney and the writer that the furnishing of this type of information would do violence to the ownership of expirations. The matter was, however, discussed with Mr. Lange who suggested that we at least advise the next Staff Meeting.

At the next meeting of the Staff on May 21, the matter was brought up and the minutes follow:

> A research organization has offered for sale to theHartford Group automobile expirations which this organization obtains through telephone inquiries. The automobile expirations are a by-product of a number of questions asked of housewives. The organization reports 85% response in securing the expiration, the name, the address, and the kind of data requested.
>
> It does not seem practical to enter an agreement of this kind, since our Group could probably use the information secured only in cities where we now have a sole Group agent. The research organization has no way of culling out Hartford insureds, and we would have no way of culling out insureds of our agents where the business was not placed in the Hartford. It is thought, however, that Hartford Group agents should be given warning of this program to assist them in the protection of their business, since undoubtedly the research organization will find some insurer who will purchase their service. This matter will be further studied to determine what steps our Group should take, if any.

In accordance with this meeting, the undersigned prepared a draft of an agent letter [Material pertaining to consultation with counsel omitted.] The letter was then reviewed and approved by Messrs. Gilmore, Handley, Lange and Hullett on May 31.

EXHIBIT B

66 aa

and Exhibits A + B

53aa.

The letter, copy attached, was dated June 6 and presumably began to arrive in agencies on June 12. At that point, telephone calls began to come in followed the next day by letters. The letters and a log of some conversations are attached.

On June 13 it was apparent that two questions were being asked in enough frequency so that a further communication with the field would be helpful and the writer's letter to Business Development Liaison Representatives dated June 14 was dispatched for this purpose. (Copy attached).

On Friday, June 15, due to the number of letters and calls, we began to consider an additional follow-up letter thinking that we might thereby take a burden from field people.

In the course of discussing this with Messrs. Draper and DeVore it was agreed that any such letter should go to the Law Department prior release. A decision has not yet been made on this.

A draft of such a letter is attached.

In addition to the question as to whether another letter should be sent to the field, one other question remains unanswered. Thus far, I have refused to pass on the name of the research organization. Is this the proper course?

67aa

William Rees
and Exhibits A + B

54aa

Dependents Ed 15
Agent

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

May 31, 1962

Mr. Mack Wallach, President
Romac Resources, Inc.
330 Fifth Avenue
Pelham, New York

Dear Mr. Wallach:

This is to reply to your letter of May 9.

We are sorry to report to you that The Hartford Insurance Group is not interested in the purchase of the names of automobile insurance policyholders along with the expiration dates of their policies.

We appreciate your interest in our organization and regret that the conclusion to our discussions with Mr. D'Arpa is a negative one.

Sincerely,

Channing Barlow

EXHIBIT C

68aa

J. C. HULLETT
PRESIDENT AND
CHAIRMAN OF FINANCE COMMITTEE

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

June 6, 1962

TO ALL HARTFORD GROUP AGENTS

Just recently the proposal was made to us that The Hartford Insurance Group purchase from a national research service the names of automobile insurance policyholders along with the expiration dates of their policies. The Hartford is, however, unwilling to be in the position of furnishing to one independent agent the names and expiration dates of another agent's policyholders.

Nonetheless, we feel that we should advise you that this information has been offered for sale to us and to other insurance companies. Obviously, the impact of this is that your competition may in the future be working with an actual expiration list of your automobile policyholders, contacting them at just the right time.

As always, the best defense against this development is prompt, personal solicitation of renewals offering counsel and protection of high quality.

Sincerely yours,

Channing Barlow

EXHIBIT D

56aa

showed to A. Burnham 6/18/62

Mr Brn---
Ever find out what happened on this? Ch.

1 20 p.m.

NO 1 HARTFORD FIRE INSURANCE COMPANY

SAN FRANCISCO

JUNE 18 1962 900

TWX INCOMING
WHEN REPLYING
REFER TO THIS
TWX NUMBER 1
INCLUDING DATE

CHANNING BARLOW BUSINESS DEVELOPMENT DEPARTMENT

FROM ALAN A HERINGHI SALES PROMOTION DEPARTMENT

SUPPLEMENTING MY LETTER OF JUNE 15, REGARDING AUTOMOBILE EXPIRATION LETTER, ORIGINAL FORM LETTER WAS RECEIVED HERE TODAY ALTHOUGH DATED JUNE 6. IT WAS NOT MAILED FROM HARTFORD UNITL JUNE 12, REGULAR MAIL.

END KAHT

EXHIBIT E

57aa

June 27, 1962

Mr. Alan A. Heringhi, Superintendent
Advertising and Sales Promotion Department
Pacific Department
The Hartford Insurance Group
720 California Street
San Francisco 20, California

Dear Alan:

Automobile Expiration Letters

I have not forgotten your TWX of June 18 on this topic. There is no question but that they "dribbled out" and this has pointed to a problem here which we are endeavoring to solve.

Many times we assume that a mailing once ordered is a mailing transmitted. It is helpful to know when this is not the case.

Sincerely,

EXHIBIT F

71aa

Informational copies to Mr. F. P. Handley

Memorandum to Mr. John F. Gilmore, Secretary

Romac Resources, Inc. Letter
Dated May 9, 1962

You will remember our agreeing that The Hartford should not purchase the expiration date lists offered in subject letter.

Per our discussion, the attached letter to all agents has been approved by Messrs. Hullett and Lange and we will probably have it out into the field before your return on Wednesday, first checking with Mr. Handley.

June 1, 1962

EXHIBIT G

59aa

The SANFORD Agency INSURANCE

1009 Texas Avenue
LUBBOCK, TEXAS

HARTFORD FIRE INS.
RECEIVED
JUN 19 1962
UNDERWRITING DEPT.

June 15, 1962

Mr. Channing Barlow
Hartford Fire Insurance Group
Hartford 15, Connecticut

Dear Mr. Barlow:

Your form letter of June 6 concerning insurance explorations available from a national research service has interested us very much. Of course we approve of The Hartford's position and are not interested in securing such information ourselves, but we are concerned as to the manner in which these research services may have secured the explorations.

If any laws are being violated, or if any unethical practices are being followed, we would like to see that they are discontinued. As Past President of the Texas Association of Insurance Agents, and with the active support of that organization, it is entirely possible that I could be of some help if any action is called for. In order to fully acquaint me with the circumstances, I would appreciate it if you would give me such information as you may have about this phase of the matter.

Yours very truly,

Marion Sanford

Marion Sanford

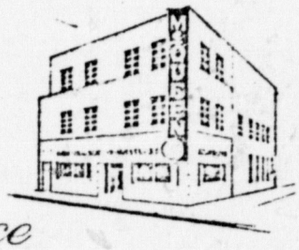
MS/rw
CC: Mike Gries
Hartford Fire Insurance
Lubbock, Texas

EXHIBIT H 93aa

Consolidated Complaint.

6 Wac

McQUEEN
INCORPORATED
Insurance



ON THE SQUARE · AT FIFTH · RACINE, WISCONSIN
TELEPHONE ME 3-7777

HARTFORD FIRE INS. CO.
RECEIVED
JUN 18 1962
CHANNING BARLOW

June 14, 1962

Mr. Channing Barlow, Vice Pres. & Sec'y.
Hartford Fire Insurance Company Group
Hartford 15, Connecticut

Dear Mr. Barlow:

Your letter of June 6, addressed to all Hartford agents, is very disturbing to say the least. Just where would a research service secure the names and expiration dates of automobile policies? Isn't there something the insurance agents can do either through their associations or going directly to their insurance commissioner's office to stop this sort of thing? We have always delivered our policies personally, never using the mails for their delivery, so we don't feel that we are in the same position as agents who have resorted to mailing renewals. However, this could cause considerable trouble, regarding our renewals.

I would appreciate any information you could give us.

Yours very truly,

McQUEEN, INC.

R. L. McQueen

RLM:mm

EXHIBIT I 74aa

HARTFORD FIRE INSURANCE COMPANY
HARTFORD ACCIDENT AND INDEMNITY COMPANY
HARTFORD LIVE STOCK INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF NEW JERSEY
HARTFORD CONNECTICUT

NEW YORK UNDERWRITERS INSURANCE COMPANY
TWIN CITY FIRE INSURANCE COMPANY

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

June 14, 1962

MEMORANDUM TO BUSINESS DEVELOPMENT DEPARTMENT LIAISON REPRESENTATIVES

The Attached Letter on Automobile Expirations

Since my earlier letter on this topic (copy attached), one question has arisen which needs clarification.

We have been asked several times where the research service gets the information which it is offering for sale. The answer is that the researchers are gleaning this information from telephone and personal interviews which ask questions on a variety of topics, automobile insurance being only one.

The Hartford's purpose in advising agents of this development was two-fold: (1) to forewarn our agents of a possible competitive threat and (2) to explain the Hartford's stand against offering this type of information.

Perhaps the above information will enable you to answer any questions which may arise in your areas.

Sincerely,

Chan Barlow

Attachment

Copy to: Departmental Liaison Officers
and
Mr. F. P. Handley, Vice President
Mr. R. B. DeVore, Vice President and Secretary
Mr. J. F. Gilmore, Secretary

EXHIBIT J

also receiving a large number of inquiries, had not been

62aa

J. C. HULLETT
PRESIDENT AND
CHAIRMAN OF FINANCE FLOOR TEE

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

June 18, 1962

TO ALL HARTFORD GROUP AGENTS

Automobile Insurance Expirations

Our earlier letter of June 6 reported to you that The Hartford had refused to purchase from a private research service the names of automobile policyholders along with the expiration dates of their policies.

Since that time many agents have asked us how research services could get the type of information which is offered for sale. We are informed that researchers glean this information from telephone and personal interviews with car owners which ask questions on a variety of topics, automobile insurance being only one. It should be emphasized that, to the best of our knowledge, no state or governmental unit, insurance company or insurance agency is providing any of the data.

Sincerely,

Chan Barlow

EXHIBIT K

96aa

63 a a

J. C. HULLETT
PRESIDENT AND
CHAIRMAN OF FINANCE COMMITTEE

HARTFORD ACCIDENT AND INDEMNITY COMPANY

HOME OFFICE—HARTFORD 15, CONNECTICUT

RICHARD H. SPENCER, MANAGER

SYRACUSE OFFICE
224 HARRISON STREET, SYRACUSE 2, NEW YORK

TELEPHONE: GRANITE 4-4151

June 13, 1962

Mr. Channing Barlow, Vice President
The Hartford Insurance Group
Hartford, Connecticut

CHANNING BARLOW
JUN 14 1962

Dear Chan:

Your form letter concerning the national service that is offering names of automobile policyholders and expiration dates has us wondering how the service gets its information.

Please fill me in with as much detail as possible.

Sincerely,

Dick

RHS:K

R. H. Spencer, Manager

YEAR IN AND YEAR OUT YOU'LL DO WELL WITH THE HARTFORD

EXHIBIT L

N a a

64aa

Floyd H. Farrant Co. *Realtors*
Farrant-Barnes Agency *Insurors*

Established 1912
873 TEANECK ROAD, TEANECK, N. J.
TEANECK 6-5952

June 13, 1962.

Mr. Channing Barlow, Vice-Pres. & Sec'y
Hartford Fire Insurance Group
Hartford 15, Conn.

Re: Automobile Expirations

Dear Mr. Barlow:

I find your mimeographed letter of June 6th concerning the expirations of automobiles to be particularly startling.

In my opinion, it is unethical that any agency should not only have access to such dates, but be permitted to sell them. First of all, I cannot understand how any individual or agency could have access to the general expirations of automobile insurance where ever placed, unless through a leak source.

Secondly, if this research service has found such a source, I feel very strongly that it is highly unethical and possibly illegal to divulge or sell this information and that if your company has been so informed of the existence of such a service, in our opinion, you should take immediate steps to prevent distribution of the information.

Cordially yours,

FARRANT-BARNES AGENCY

Louie Farrant

LOUIE FARRANT.

LF:el

cc: Ronald Patterson, Pres.
Bergen Co. Assoc. of
Insurance Agents.

EXHIBIT M

cc: John F. Gilmore
J. K. Caprio

Jack Wallach
President

EXHIBIT A

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Automobile Expirations - Telephone conversations

Jack Walker, Allen, Russell and Allen - 6/13/62...Many thanks for tipping us off.

Ernest Baker, General Insurance Agency, Roanoke, Va....Applauded Hartford's attitude.....Had talked to executive secretary of Virginia Association.

Ben Dutton, Special Agent, Roanoke, Va.....Just wanted us to know we are getting agent reaction down there. Everyone feels it is a step in the right direction.

Bob Lloyd, Manager of Pittsburgh office.....Local Insurance News wants to reprint letter with commendation for Hartford.

Jim Woodworth, Robinson, Illinois - President Illinois Association.... How is information being gotten and by whom?.....Many thanks.....If Hartford can pass on more information later, would appreciate.

Jack Crosson, President Connecticut Association of Insurance Agents (Geo. B. Fisher Co., Hartford)....Commended Hartford on our stand. Asked for copy of letter to agents and Liaison Representatives.

George Kramer, President of New York State Association.....Has received twenty copies of our letter. Additional 72 letters are in Syracuse. Is dictating bulletin complimentary to The Hartford but wants to know who the source is. Have told him I cannot tell him but promised further discussion.

Helen Maletz, Kansas (city not known)...Wanted to know how information gotten. Happy to have the warning. Told us we could build a new building on her 150 acres.

Frank Ahearn had lunch with three agents. All were up in arms about the prospect. Glad to get letter.

Bill Lawson, Butler's Insurance...Where is information coming from.

David Baker - Danbury....Thank you a lot. Where is information coming from?

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EXHIBIT N

66aa

Mr. John Crosson
George B. Fisher Co.
609 Farmington Ave.
Hartford, Conn.

Pres. of Conn. Association of Insurance Agents

6/14/62 - called - sent both letters (agent and Reps.)

EXHIBIT O

William Ellis and Exhibits A + B

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

ROMAC RESOURCES, INC., Plaintiff	)	
vs.	)	Civil Action No. 11,386
HARTFORD ACCIDENT & INDEMNITY COMPANY, et al., Defendants.	)	
MODERN HOME INSTITUTE, INC., Plaintiff,	)	
vs.	)	Civil Action No. 11,464
HARTFORD ACCIDENT & INDEMNITY COMPANY, et al., Defendants.	)	

AFFIDAVIT OF WILLIAM W. ELLIS ON BEHALF OF DEFENDANT THE AETNA CASUALTY AND SURETY COMPANY

STATE OF CONNECTICUT)
) ss.
COUNTY OF HARTFORD)

WILLIAM W. ELLIS, being duly sworn, deposes and says:

1. I am over 21 years of age.

2. I believe in the obligation of the oath.

3. I submit this affidavit on behalf of The Aetna Casualty and Surety Company's Motion For Summary Judgment.

4. In 1962 I was Secretary of The Aetna Casualty and Surety Company in its Agency Department, and was involved in the Aetna's consideration of the proposal made by Romac Resources, Inc. and Modern Home Institute, Inc. to sell X dates to the Aetna.

5. On July 16, 1962, it was announced at the weekly Aetna Agency Department Staff meeting that the Aetna had concluded

EXHIBIT C

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that it would not purchase the X dates offered by Romac Resources, Inc.

6. The minutes of the Agency Department Staff meeting for July 16, 1962 contain the following:

> Mr. Ellis discussed the meeting that he and Mr. Van Gils had with Romac Resources, Inc. that they had on Tuesday, July 10. It has been concluded that we will not avail ourselves of their service of obtaining x date. A memo to our Field Offices setting forth a reason for not subscribing to this service will be sent in the future.

7. On July 17, 1962, I mailed to Mr. Robert D'Arpa, Romac Resources, Inc., a letter stating that the Aetna declined to accept Romac's offer. A true copy of that letter is attached hereto as Exhibit A and incorporated herein.

8. On July 19, 1962, after we had informed the Agency Department that we would not accept the Romac offer, and after I had sent the letter of July 17, 1962 (Exhibit A) to Mr. D'Arpa declining to accept Romac's offer, there was a luncheon meeting of some local Aetna agents at the Aetna. Present at this luncheon meeting were H. D. Van Gils, Vice President, The Aetna Casualty and Surety Company, R. L. Fosbrink, General Manager of Aetna's Hartford Office, and I, as well as the following local Aetna agents: Herbert Bland, John B. Crosson, David E. Ashton, Stanley Sumner, Ted Ward, Ivan Dockham and Burt Oelschlegel. Among other things we had a round table discussion concerning the Barrett-Russo Act which had been passed in the State of New York, the commission situation as respects Homeowners Insurance, and the Romac proposition.

9. It was the normal course of business in 1962 for an officer of The Aetna Casualty and Surety Company to sign a luncheon "chit" for luncheon guests of the Company. The attached Exhibit B, which is incorporated herein, is a true copy of the luncheon "chit" which I signed at the July 19, 1962 luncheon referred to above in paragraph 8. Such "chit" was prepared and signed in

EXHIBIT D

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the normal course of the Aetna's business.

10. On July 23, 1962, at the weekly Agency Department Staff meeting, I commented on the July 19, 1962 luncheon meeting referred to above in paragraph 8.

11. The minutes of the Agency Department Staff meeting for July 23, 1962 contain the following:

> Mr. Ellis commented on a luncheon meeting attended by 7 of our agents from Connecticut. Several subjects were discussed such as the Barrett-Russo Bill, the obtaining of expiration dates from Romac, and several other industry problems. He stated that the results of this meeting seem to be worthwhile. Mr.Van Gils suggested that when an interested officer is touring his territory that he encourage the General Managers to arrange a small informal luncheon with several of our good agents so that they might get a closer insight as to the Company's position in controversial industry problems.

12. The decision of The Aetna Casualty and Surety Company to reject the X date proposal of Romac Resources, Inc. and Modern Home Institute, Inc. was a unilateral, independent business decision, which The Aetna Casualty and Surety Company felt was in its best economic interest.

13. At my deposition in this action, Richard M. Reynolds, counsel for The Aetna Casualty and Surety Company, asked me the following questions, and I gave the following answers, which were and are true answers (Tr. pp. 3514-3515):

> Q I have a couple of questions, Mr. Ellis; prior to rejecting Plaintiffs offer to sell Aetna X dates did you or did anyone employed by or representing the Aetna Casualty Company or the Aetna Life and Casualty Company to your knowledge ever have any conferences, correspondence, meetings or communications of any kind with anyone representing or purporting to represent or acting on behalf of any other insurance company regarding the possible acceptance or rejection of the offer of Romac Resources Inc., or Modern Home Institute Inc., to sell the Aetna X Dates?
>
> A To my knowledge there were no such communications of any kind.
>
> Q Would your answer then be No?
>
> A Right.

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EXHIBIT E

10 aa

Q When I said any other insurance company, two questions ago, I, of course, included the following companyes all of which are named defendants here. Hartford Accident and Indemnity Company, Hartford Fire Insurance Company, Nationwide Mutual Insurance Company, Nationwide Mutual Fire Insurance Company, the Travelers Insurance Company, the Travelers Indemnity Company, Allstate Insurance Company, Liberty Mutual Insurance Company, Liberty Mutual Fire Insurance Company, State Farm Mutual Insurance Company, State Farm Fire & Casualty Company, would the answer to my previous question, which was no, have been any different if I had specifically named these companies or anyone of them?

A The answer is no.

Q Prior to rejecting Plaintiffs' offer to sell the Aetna X dates, did you or did anyone employed by or representing the Aetna Casualty & Surety Company or the Aetna Life & Casualty Company to your knowledge ever have any conferences, correspondence, meetings or communications of any kind with anyone representing or purporting to represent or acting on behalf of the Connecticut Association of Independent Insurance Agents Inc., regarding the possible acceptance or rejection of the offer of Romac Resources Inc. and Modern Home Inc. -- Modern Home Institute Inc. to sell the Aetna X dates?

A The answer is no.

William W. Ellis

William W. Ellis

Subscribed and sworn to before me this 4th day of June, 1973.

Sheila L. Wilmer

Notary Public

MY COMMISSION EXPIRES MARCH 31, 1974

EXHIBIT F

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EXHIBIT A

July 17, 1962

Mr. Robert D'Arpa
Romac Resources, Inc.
330 Fifth Avenue
Pelham, New York

Dear Bob:-

You people have been very patient and understanding and we dislike very much to keep your proposition pending any longer.

While there are, as you know from our evidenced interest, many things about your proposal that appeal to us, we have reluctantly come to the conclusion that we cannot efficiently use the service you are so well equipped to render.

We are very grateful for the opportunity to become acquainted with you, Mr. Wallach and your other associates as well as for the time and trouble you have expended in helping us consider your proposition. If we can be of service to you in the future, please feel free to call on us.

Sincerely,

W.W.Ellis/jgr

Secretary

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74-1965

72a a

Exhibit B

Ætna Life Affiliated Companies

Date	Waitress	No. Persons
JUL 19 1962	[illegible]	10

	Service	5	00
	State Sales and Use Tax		40
10	Tomato Juice	11	90
10	Fried Chicken		
10	Mixed Fruit Salads		
10	Sherbet		
10	Beverages		
	Co. Guests		
	C/ 1		
	Mr. Ellis		
	Signature: [illegible]		
(8695-D)		17	50

Luncheon

Those Present

H. D. Van Gils, Vice Pres. - Ætna Life & Casualty
W. W. Ellis, Secretary " " "
R. L. Fosbrink, Gen. Mgr. - Ætna's Hartford Office

Ætna Life & Casualty Agents

Herbert Bland - R. C. Knox & Co. - Hartford
John B. Crosson - Hartford
David E. Ashton - Ashton-Baldwin - Hartford
Stanley Sumner - Sumner & Sumner - Willimantic
Ted Ward - New Haven
Ivan Dockham - Winstead
Burt Oelschlegel - Wood Agency - Terryville

86a a

74-1965

EXHIBIT H 73aa

C.A.I.A.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

MODERN HOME INSTITUTE, INC. and ROMAC RESOURCES, INC., Plaintiffs	)	
vs.	)	CIVIL ACTIONS NOS. 11386 and 11464
HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD FIRE INSURANCE CO., THE AETNA CASUALTY AND SURETY CO., THE TRAVELERS INSURANCE COMPANY, THE TRAVELERS INDEMNITY CO., ALLSTATE INSURANCE COMPANY, and THE CONNECTICUT ASSOCIATION OF INDEPENDENT INSURANCE AGENTS, INC., Defendants	)	JUNE 8, 1973

AFFIDAVIT OF JOHN B. CROSSON ON BEHALF OF DEFENDANT THE CONNECTICUT ASSOCIATION OF INDEPENDENT INSURANCE AGENTS, INC.

STATE OFCONNECTICUT
ss. Hartford
COUNTY OF HARTFORD

John B. Crosson, being duly sworn, does hereby depose and say:

1. I am more than 21 years old.

2. I believe in the obligation of an oath.

3. I make this affidavit on behalf of The Connecticut Association of Independent Insurance Agents, Inc.'s Motion for Summary Judgment in the above captioned action.

4. I was president of The Connecticut Association of Independent Insurance Agents, Inc. (hereinafter referred to as "CAIIA") from September, 1961 until September, 1962.

5. During late May or early June of 1962 trade gossip among insurance agents rumored that someone or some group was attempting to ascertain the expiration dates of automobile insurance policy-

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holders and to sell the names and addresses of such policyholders, together with their expiration dates, to insurance companies and/or insurance agents.

6. The first direct knowledge which I acquired of the attempted sale of these expiration dates was on approximately June 13, 1962, when a Connecticut insurance agent who belonged to CAIIA, whose name I cannot now recall, forwarded to me a copy of a letter dated June 6, 1962, which he had received from Channing Barlow of Hartford Fire Insurance Company Group. Exhibit A attached hereto is a copy of the document which was forwarded to me.

7. After I received a copy of the Barlow letter of June 6, 1962, I contacted, by telephone, the office of the Connecticut Insurance Commissioner and inquired as to whether Connecticut law permitted persons who were not licensed Connecticut insurance agents to compile or sell information concerning expiration dates. This conversation was with Frank Wagner who had responsibility for licenses and claims in the Insurance Commissioner's Office. Mr. Wagner advised me that he would look into this question and contact me when he had determined the answer. I had at least one more subsequent conversation with Mr. Wagner, and I may have had a subsequent conversation with the then Insurance Commissioner, Alfred Premo, and I was advised by the Insurance Commissioner's Office that under Connecticut law the compilation of information concerning expiration dates in Connecticut could not be conducted by persons who were not licensed Connecticut insurance agents. I had no contact with the Insurance Commissioner's Office concerning the sale of expiration dates before I received

a copy of the Barlow letter dated June 6, 1962.

8. After I received a copy of the Barlow letter of June 6, 1962, I also contacted on one or two occasions, by telephone, someone from Hartford Fire Insurance Company Group. I am not now certain who it was I spoke to, but it may have been Channing Barlow. This conversation, or these conversations, related to the decision of that company not to purchase expiration dates. I had no contact with anyone from that company concerning the sale of expiration dates before I received a copy of the Barlow letter dated June 6, 1962 from the CAIIA member referred to in Paragraph 6 hereof. I had no conversations at any time with anyone from that company concerning the sale of expiration dates except for the conversations referred to in this paragraph.

9. After I received a copy of the Barlow letter dated June 6, 1962, and not later than July 19, 1962, I attended a meeting at the home office of The Aetna Casualty and Surety Company in Hartford with William Ellis of that company and with other employees of that company and several Connecticut insurance agents. At this meeting we discussed the sale of expiration dates, a New York state proposal called the Barrett-Russo Act and possibly other topics of mutual concern to that company and the agents present. This meeting constituted the only conversation which I had, at any time, with Mr. Ellis or with any other employee or employees of The Aetna Casualty and Surety Company concerning the sale of expiration dates.

10. On July 19, 1962 CAIIA issued an information bulletin to its members, a copy of which is attached hereto and marked Exhibit B. This bulletin contained, among several other articles of interest to CAIIA members, notice of the rejection by the Hartford Insurance Group of the proposal that it purchase expiration dates, notice that the State Insurance Department felt that the solicitation of expiration dates in Connecticut by persons who were not licensed Connecticut insurance

EXHIBIT K
None

agents was illegal and a request that any CAIIA member who learned of such a solicitation of any of his policyholders contact CAIIA so that it could pass this information on to the Insurance Department. The bulletin dated July 19, 1962 was the only written communication issued by or on behalf of CAIIA which concerned, in any way, expiration dates.

11. I had no contact of any kind at any time with The Travelers Insurance Company or The Travelers Indemnity Company concerning Expiration dates.

12. As president of CAIIA I was familiar with and aware of all actions taken by or on behalf of CAIIA during my term of office.

13. During my term as president of CAIIA all conversations concerning expiration dates which were engaged in by or on behalf of CAIIA with any person or organization who was not a member of CAIIA were made personally by me.

14. During my term as president of CAIIA the only conversations concerning expiration dates which I engaged in with non-members of CAIIA were:

a. The conversations with the Connecticut Insurance Commissioner's Office described in Paragraph 7 hereof;

b. The conversation, or conversations, with someone from Hartford Fire Insurance Company Group described in Paragraph 8 hereof;

c. The conversation with employees of The Aetna Casualty and Surety Company described in Paragraph 9 hereof

JOHN B. CROSSON

Subscribed and sworn to before me this day of June, 1973.

Commissioner of Superior Court

EXHIBIT L

THIS IS TO CERTIFY that a copy of the foregoing Affidavit was mailed this date, postage prepaid, to the following:

Leonard A. Schine, Esq., Joel C. Karp., Esq., Thomas C. Gerety, Esq., Ronald Bozelko, Esq. and Robert L. Julianelle, Esq., 855 Main Street, Bridgeport, Connecticut 06604; J. Daniel Sagarin, Esq., 855 Main Street, Bridgeport, Connecticut 06604; John J. Kenny, Esq., Kenny, Havens & Widem, 49 Pearl Street, Hartford, Connecticut 06103; John L. Warden, Esq. and William Piel, Esq., Sullivan and Cromwell, 48 Wall Street, NewYork, New York 10005; Richard M. Reynolds, Esq., Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103; David Goldstein, Esq., Goldstein & Peck, 955 Main Street, Bridgeport, Connecticut 06604 and George D. Brodigan, Esq., 700 Main Street, Hartford, Connecticut 06115.

GEORGE LEVINE

LF:el

cc: Ronald Patterson,Pres.
Bergen Co. Assoc. of
Insurance Agents.

EXHIBIT M

1912 - Our Fiftieth Anniversary - 1962

EXHIBIT A

J. C. HULLETT
PRESIDENT AND
CHAIRMAN OF FINANCE COMMITTEE

HARTFORD FIRE INSURANCE COMPANY GROUP

HARTFORD 15, CONNECTICUT

CHANNING BARLOW
VICE PRESIDENT AND SECRETARY

June 6, 1962

TO ALL HARTFORD GROUP AGENTS

Just recently the proposal was made to us that The Hartford Insurance Group purchase from a national research service the names of automobile insurance policyholders along with the expiration dates of their policies. The Hartford is, however, unwilling to be in the position of furnishing to one independent agent the names and expiration dates of another agent's policyholders.

Nonetheless, we feel that we should advise you that this information has been offered for sale to us and to other insurance companies. Obviously, the impact of this is that your competition may in the future be working with an actual expiration list of your automobile policyholders, contacting them at just the right time.

As always, the best defense against this development is prompt, personal solicitation of renewals offering counsel and protection of high quality.

Sincerely yours,

Channing Barlow

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EXHIBIT N

EXHIBIT B

WM. H. WILEY
Executive Secretary

INFORMATION BULLETIN

Connecticut Association of Insurance Agents, Inc.

125 TRUMBULL STREET, ROOM 206
HARTFORD 3, CONNECTICUT

July 19, 1962

SALE OF EXPIRATION DATES OF INSURANCE POLICIES BY A NATIONAL RESEARCH SERVICE

Recently the Hartford Insurance Group issued information to its agents that a national research service had offered names of automobile insurance policyholders along with the expiration dates of their policies. The Hartford Insurance Group, was, of course, unwilling to accept any such proposal. We commend the Hartford Insurance Group in its forthright stand.

Since the original announcement by the Hartford Group, it has been ascertained by the National Association that this Research Service has sold this service to a direct writer, reportedly the Nationwide Mutual Insurance Company of Columbus, Ohio.

The National Association also learned that this service had been offered to another agency company without success. The name and information were reportedly offered at 45 cents each.

Our President, Jack Crosson, has been in touch with the Insurance Department on this matter. The Licensing and Claims Division of the Department told him anyone soliciting expiration dates and names of policyholders in this State would be violating the State Insurance Laws unless they were licensed as agents.

It is, of course, debatable as to whether such a service is worth the money paid.

However, your State Association feels that the membership should be informed of this situation and we ask all members to be on the alert for any information from their Policyholders regarding the activities of this Research Service in this State. If we can get the name and address of any individual conducting this solicitation, it will be most helpful and we will immediately report them to the Insurance Department.

The National Association Executive Committee is discussing this matter at their forthcoming Meeting next week. If any further information of interest to the membership is received on this situation, we will promptly report it to you.

CONNECTICUT ASSOCIATION RAISES A RECORD SUBSCRIPTION FOR N.A.I.A. 1962 ADVERTISING CAMPAIGN

We are happy to announce that this Association has pledged a total of $51,121.10 for the 1962 Advertising Campaign. This is the largest amount ever raised by this Association for Advertising purposes. It represents subscriptions by 637 member agencies out of a total membership of 804, the largest number of subscribing agencies also on record.

On the National level this Association ranks second in the country in the percentage of money raised over its National quota. Only Florida tops Connecticut in this respect.

(Over, please)

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EXHIBIT O

Great credit goes to State Advertising Chairman, John F. Phelan, of Meriden and his Committee for this very successful effort. Besides the Chairman, the following members comprise the C.A.I.A. 1962 Advertising Committee:

William F. Malloy, 322 Main Street, Stamford
Ernest W. Weiman, 101 Whitney Avenue, New Haven
Ted A. Berman, 170 Willow Street, Waterbury
William W. Thompson, 670 Main Street, Willimantic
Louis J. Esposito, 461 Bank Street, New London
Joseph Horvath, 410 Asylum Street, Hartford
Benjamin F. Hendricks, 1169 Main Street, East Hartford
Ronald Hyatt, 25 West Main Street, Plainville

Also the sincere thanks and appreciation of the Officers, Executive and Advertising Committees of this Association are given to those 637 loyal members who by their co-operation have made possible this wonderful achievement for Connecticut.

The Big "I" is gaining in popularity and public approval. The Independent Agent is being recognized more and more by the incoming public. All this is a result of the N.A.I.A. Advertising Campaigns and our own efforts here in Connecticut.

THE HARTFORD FIRE GROUP JOINS RANKS OF COMPANIES TYING IN WITH THE BIG "I"

We are pleased to announce that The Hartford Group will now be using our Big "I" symbol in much of its advertising. We appreciate this move on the part of The Hartford and urge their agents to acknowledge this act of support by writing to the officers of the companies.

The list of those companies besides The Hartford Group as of July 1st now using the Big "I" in connection with their advertising we give you below:

Aetna Cas & Sur Co
Aetna Ins Co
Agricultural Ins Gp
American Assn of Mg General Agents
America Fore Loyalty
American Cas Co
American Ins Gp
American Universal
Appleton and Cox
Bankers Fire & Marine
Bituminous Cas Corp
Boston Insurance Gp
Camden Fire Ins Assn
Canal Ins Co
Com Un-North Brit Gp
Continental-National Gp
Corroon & Reynolds
Crum and Forster
Employers Group
Excelsior Ins Co
Fidelity & Deposit Co
Fund Insurance Cos
General Accident Gp
General Fire & Cas Co.
Glens Falls Ins Gp
Great American Gp
Hanover-Fulton Gp
Hartford Steam Boiler
Hawkeye-Security
Home Insurance Co
KCF&M
London Assurance
London & Lancashire
Maryland Casualty Co
Millers Nat-Ill Fire
National Union Ins Co
New Amsterdam Cas
New Hampshire Group
Norwich Scottish Group
Ohio Casualty
Ohio Farmers
Pacific Employers
Pacific Indemnity
Phoenix of Hartford
Phoenix-London Gp
Providence Washington
Reliance Ins Co
Royal-Globe Ins Gp
Springfield-Monarch Gp
Standard Accident
St. Paul Companies
Travelers
Trinity Universal
USF&G
The Western Companies
Zurich-American

This is a total of 57 Companies. The list grows each year. This should be an answer to those agents who ask "Why don't the companies help us in this advertising?"

Agency Department Staff meeting that the Aetna had concluded

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PROTECTION WEEK

Protection Week will be observed in November. It will be the culmination of a month of concentrated advertising using the theme of the Big "I" and promoting the services of the Independent Insurance Agent. Also the theme "Check up on your Insurance Needs" will be emphasized as well as the idea of increasing insurance to value. The companies are co-operating by running advertising that will run concurrently and tie-in with the N.A.I.A. Advertising Campaign. On the State level our own campaign will be concentrated during this period by Local Board advertising on Bill Boards and in newspapers. We will also have a concentrated television promotion on Stations WNHC and WTIC (New Haven and Hartford).

You will be given more detailed information on Protection Week in future Bulletins but this will be the time for individual members to tie-in with their own advertising. The over-all impact of all their advertising concentration should be terrific and each agents individual efforts will add to the impact.

CANADIAN TAX PROPOSAL
AFFECTS UNITED STATES AGENTS

We have been notified by Bulletin from the National Association under date of July 3, 1962, Re: A new provision included in the Finance Ministers budget presented to the Parliament of Canada in April of this year which reads as follows:

"Resolution 8.-Insurance Companies-Net premiums tax.

"8. That the present tax of 10 per cent on net premiums in respect of insurance against risks in Canada paid or payable by Canadian residents to an insurer not authorized under the laws of Canada or any province to transact the business of insurance, be extended to apply to net premiums in respect of any such insurance paid or payable by or on behalf of Canadinn residents, where such insurance is entered into or renewed through a broker or agent outside Canada with an insurer that at the time the contract is entered into or renewed is authorized under the laws of Canada or any province to transact the business of insurance.

This is one of the stern economic measures proposed by the Canadian Government to combat the threat of a currency crisis.

This additional tax of 10% where insurance is entered into or renewed through a broker or agent outside Canada, is retroactive to April 10, 1962. Strictly speaking, the new tax will not take effect until enabling legislation is passed by the Parliament of Canada. When this is done, its effect is made retroactive to the date specified in the Resolution, and accordingly, in most instances, the new tax is treated as law from the moment of its announcement.

The tax is imposed on the assured. Tax assessments are submitted annually by the Department of Insurance of the Government of Canada.

United States agents who directly cover property in Canada after April 10, 1962, whether the policy is new or a renewal, will subject the assured to an additional 10% premium tax whether or not the insurer is authorized under the laws of Canada or any province to transact the business of insurance.

One way to eliminate this additional 10% charge to the assured would be to make arrangements with a Canadian resident agent or broker to complete the transaction.

We will be glad to give you more details of this matter if you are further interested.

(Over, please)

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above in paragraph 8. Such "chit" was prepared and signed in

SUMMER MEETING OF
C.A.I.A. BOARD OF DIRECTORS

The Summer Meeting of the Board of Directors will be held at 1:30 P.M. at the Hotel Griswold, Eastern Point, Groton, Connecticut. This Meeting is open to all members of the Association. Why not attend and hear the deliberations of the Policy-Making Body of your Association. You will gain a better understanding of its many activities and problems. You will get first hand knowledge of the amount of work your officers and committees are doing in your behalf.

NATIONAL ASSOCIATION ANNUAL MEETING

September 23-26, 1962 Washington, D.C.
Hotels Sheraton-Park, Shoreham, & Shoreham Motor Inn

An outstanding Program has been arranged. Washington is not too far away for Connecticut Agents. Let's have a record delegation there from this Association. Application for Registration and Hotel Reservation can be found on Page 25 of the July Issue of the AMERICAN AGENCY BULLETIN. We also expect to have a supply of registration and reservation blanks in the Association office within a short time. Send in your registration now and be assured of preferred hotel space.

C.A.I.A. 64th ANNUAL MEETING

October 25, 1962
Hotel Statler-Hilton, Hartford

Program for this meeting is in the works and it promises to be a Dilly. Mark the date on your calendar now and plan to attend.

SEATTLE FAIR VISITORS URGED TO CHECK
AUTO INSURANCE IF THEY DRIVE TO CANADA

Americans driving in British Columbia, Canada, this summer, as many Seattle World's Fair visitors will be doing, face the possibility of having their automobiles impounded unless they make special automobile insurance provisions ahead of time, the Insurance Information Institute has cautioned.

Because of a change in the financial responsibility law of British Columbia, the type of auto insurance coverage most frequently purchased in the U.S. will no longer satisfy the requirements of British Columbia law. Most insurance companies, however, are expected to adjust their policies to meet the new requirements, the I.I.I. said.

Non-resident drivers becoming involved in automobile accidents in British Columbia will be required to show evidence of acceptable bodily injury and property damage coverage or risk having their vehicles impounded, the I.I.I. said.

Prior to entering the Canadian province, motorists should consult with their agent or broker to make certain they have the right kind and sufficient coverage. Agents and brokers also can help them obtain an official British Columbia Motor Vehicle Liability Insurance Card which can be filled out in advance and used to demonstrate proper insurance coverage in the event of an accident.

Agency For Sale In Manchester

Long established Agency for sale in Manchester. Agent has fine reputation and good business. Inquire Association Office.

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